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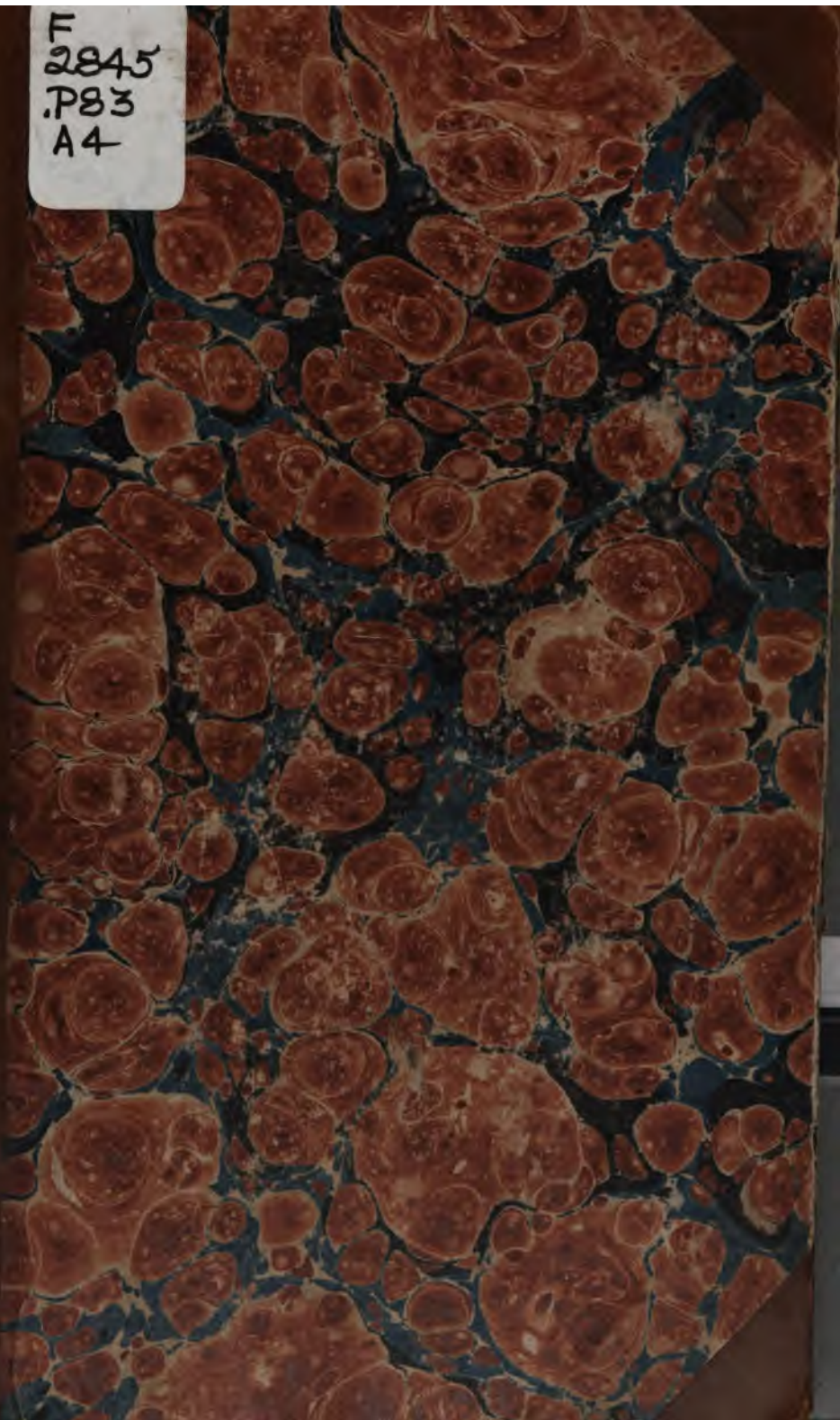
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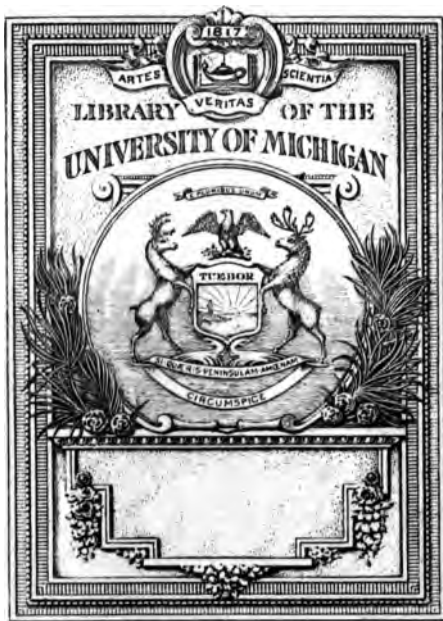
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Popham, Sir Home Riggs

**By Authority.**

A FULL AND CORRECT REPORT  
OF THE  
**TRIAL**  
OF  
**SIR HOME POPHAM,**

INCLUDING  
THE WHOLE OF THE DISCUSSIONS WHICH TOOK PLACE  
BETWEEN THAT OFFICER AND MR. JERVIS, THE COUNSEL  
FOR THE ADMIRALTY, WHO ACTED UPON THIS OC-  
CATION AS PROSECUTOR, AND ALSO THE  
OBSERVATIONS OF THE SEVERAL  
MEMBERS OF THE COURT.

TOGETHER WITH

**A PREFACE,**

CONTAINING

*A further Vindication of Sir Home Popham, particularly against  
certain Attacks made upon him since the Trial:*

AND

**AN APPENDIX,**

IN WHICH ARE

Several important Documents, which have never been published;  
and among others an interesting Letter from  
Lord GRENVILLE to Sir HOME POPHAM.

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**SECOND EDITION.**

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## DEDICATION.

THIS Book, the publication of which has been impeded by causes somewhat similar to those which led to the persecution of Sir Home Popham, is at length offered to the Public; and dedicated, with the utmost respect and regard, to

*The Navy of England.*



## PREFACE.

IN the History of this Country, there has not perhaps occurred a trial which excited or involved an equal degree of public interest with that which forms the subject of the following sheets. It is material to public justice, as it must be desirable to public curiosity, that every particular, connected with such a trial, should be fully made known. No industry, therefore, has been remitted to render this edition complete. Every fact has been stated, every document has been introduced, that appeared at all necessary to elucidate the conduct, character, and views, of Sir Home Popham; and to explain the motive and object of those by whom the prosecution was instituted against him. Such a publication will, I have no doubt, be read with interest by every man at all concerned for the fame and glory of that profession of which Sir Home Popham has been long a distinguished member:—and of what materials must that Englishman be constructed, who does not feel a warm concern for any thing connected with the interest of a profession, the character of which forms the highest source of our national pride! Indeed, to whatever nation that man may belong, who contemplates the character



of the British navy, it is impossible that the valour, generosity, and lofty sentiment, which form its prominent features, shall not command his admiration and applause. For of all the corps that, in the history of the world, have been formed for purposes of war, there is none to be found so eminently distinguished as the British navy for those qualities which the poet would panegyrisé in the character of a warrior, which the philanthropist would desire to temper the calamities of war.

When I call Sir Home Popham a *distinguished* member of such a profession—aware of the cavilling of his foes, of the active industry employed to depreciate his fame—I think it not amiss to state the grounds upon which this epithet is fairly applicable to his name. His talents as an officer stand high in the estimation of his profession—his valour is unquestionable—his skill and judgment as a naval commander were sufficiently exemplified, even in the expedition which brought him to trial—his capacity as a diplomatist was most conspicuously manifested in his negotiations with the court of Russia, as appears, upon the testimony of Lord Grenville, in note M. of the appendix ; while the penetration, promptitude, eloquence, and powers of reasoning, which belong to this officer, will be fully apparent to any man who reviews his con-

troversies (which are literally reported in this publication), who reflects upon his repeated victories over the eminent barrister appointed to conduct the prosecution against him.

In describing Mr. Jervis as an eminent barrister, I am naturally led so to consider him from the *rank* he holds in his profession, to which he was raised by the late administration, who thought proper to appoint him one of the "King's Counsel learned in the law;" and who could not be influenced in such an appointment, by the circumstance of Mr. Jervis being the nephew of Lord St. Vincent.

To the able, luminous, and comprehensive defence of Sir Home Popham there remains but little, indeed, for the ingenuity of any man to add. There is not, as I contend, one single allegation in the charge which this defence did not completely refute, at least to the satisfaction of the public judgment, and to the conviction of all reflecting men, who were capable of examining the subject without any undue prepossession.

The principal ground of accusation, relied upon by those who instituted, conducted, or advocated, the prosecution of Sir Home Popham, was this, "that, by withdrawing his forces, he left the Cape of Good Hope undefended." But will it be credited

that, at the very moment this officer was on his trial at Portsmouth, the Admiralty, which put forth so prominently such an article of charge against him, had stationed only *one frigate* at the Cape of Good Hope for its security ! And the reader of the trial will perceive that Sir Home Popham, upon proceeding to America, left behind him a frigate at the Cape ; therefore, so far as regarded the naval defence of the Cape, the alledged neglect of Sir Home Popham was quite as effective as the actual vigilance of the Admiralty.

With this fact in the contemplation of the reader, how is it possible for him, if free from private pique and party prejudice, to reflect without astonishment, and something more, upon that which constitutes a main part of the charge. Sir Home Popham was placed with a large fleet in such a situation as, it appears from evidence, must have rendered it for some months incapable of action—positively useless. From this inaction that officer released the fleet, and employed it for the attainment of an object which he knew to be desirable to the Minister of the day—encouraged to think, by information obtained at the moment, that such an object was perfectly attainable. The Admiralty, however, who succeeded that Minister, prosecuted Sir Home Popham, alledging, as a principal ground for the prosecution, that he left the Cape of Good Hope

undefended, by withdrawing from it an amount of naval force such as that Admiralty itself proved, by its subsequent conduct, that it did not feel necessary to the defence of that establishment! For, mark, if they felt such a force to have been essentially necessary, they were guilty of criminal neglect in trusting, for its security, to a single frigate. The Admiralty must, indeed, either admit the fallacy of this article of impeachment against Sir Home Popham, or plead guilty to the charge of criminal neglect. Does not the simple statement of this, the most material, part of the case, preclude the necessity of comment?

But let me suggest, for the consideration of the reader, in what a dilemma Sir Home Popham would have been placed had Mr. Pitt continued to live, and to preside in the Administration, and had this officer declined to pursue the course which rendered him obnoxious to the censure of the late Ministry. Had Sir Home Popham, in the circumstances I have mentioned, remained inactive at the Cape, what reception, I would ask, was he likely to have met with, on his return to England, from Mr. Pitt and Lord Melville?

That may be stated again which I have often heard, that Sir Home Popham was not warranted in acting upon the mere authority of Mr. Pitt.

¶

But, without any criticism on the pertinacity that would insist upon such an objection, one may be permitted to ask, how it can at all be consistently urged by those who were so forward to assert the predominating power of Mr. Pitt, during his last administration—by those who were in the habit of maintaining, that Lord Barham was rarely consulted, and but a mere agent for the execution of Mr. Pitt's mandate—that, indeed, that minister's will was the law in the several departments of the administration—that the presidents of those departments were mere nominees, and that all were subservient to the directions of Mr. Pitt? The truth or falsehood of these assertions it is not relevant to my purpose to examine; but it is unquestionably true that Mr. Pitt was, particularly during his last administration, by far the most powerful minister in the Government we have ever witnessed since the Revolution. Now, can it be deemed surprising, or pronounced culpable, that a naval officer should have thought himself secure, and justified in acting upon the authority of that minister alone? At all events, those who, as I have already observed, industriously endeavoured to impress the public with an idea of the ministerial omnipotence of Mr. Pitt, could not, with any colour of consistency, come forward to condemn the naval officer who so thought and acted.

But to return to the charge: there is one part of

it which must, in particular, excite the surprise of every attentive reader; namely, that Sir Home Popham, "did withdraw from the Cape the naval force, &c. *which had been placed under his command, for the sole purpose of protecting it.*"

It is difficult to say whether this part of the charge should be met by ridicule or serious argument. There is not a line in Sir Home Popham's original instructions which prescribes that he was invested with command "for the sole purpose of protecting the Cape;" (see the Instructions). On the contrary, it appears from number 4, that, according to the order of the government from which Sir Home received his original instructions, he was to proceed to India with the Diadem, &c. as a convoy, "in the event of its being necessary, to forward to India the whole force under Sir D. Baird." But in fact it appears that several orders were conveyed in his original instruction, and transmitted to him in subsequent dispatches, which completely negative the assertion, that the force he commanded was placed under his direction "for the sole purpose of protecting the Cape." Indeed, after reviewing those orders, it will be scarcely possible for the reader to look at this passage in the charge without considerable astonishment. But yet the Court found that all "the charges were proved"!—



Upon the character of this Court it is unnecessary for me to make any comments ; the public seem already to have formed their judgment. It is certain that the number of Admirals upon this court-martial appears to have excited general observation and surprise ; and few seem competent to decide what motive could have induced the appointment of such an increased number, still more the selection of some of the individuals of that number from stations so very distant from the scene of trial. Compared to any former court-martial, the number of admirals in this instance was nearly double. Upon Byng's trial there were four Admirals ; upon Keppel's, five ; upon Palliser's, four ; upon Duckworth's, three ; and upon Calder's, six ; and it will be recollected that in each of these cases the accused was an Admiral.

In consequence of this extraordinary number of Admirals upon Sir Home Popham's trial, some have thought proper to go the length of stating that this officer was not tried by his peers. There were, in fact, among all the members of the court, but two who were junior to Sir Home. According to all the information I can collect, there is no case on record of a number of Admirals being collected to try a commodore. Such commanders have, as I learn, been always tried by the officers happening

to be present at Portsmouth, without proceeding elsewhere for selection.

Another extraordinary circumstance appears in this case, in the distance of the stations from which the Admirals were brought. There is no precedent whatever of sending to Leith (the station of Admiral Vashon) to provide a member for a court-martial sitting at Portsmouth; and none within our recollection of sending for one to Plymouth, which is the station of the president. And this, by the by, is not the least singular feature in this singular trial. For in each of the cases already mentioned in this note, the commander in chief at Portsmouth was president. I have sought in vain for any case of a contrary nature. What reason can be assigned for the deviation in this instance from the general practice? It cannot be pretended that Admiral Montague was too much engaged in port duty to attend the court-martial. That is well known not to have been the fact. When Admiral Keppel was tried, Sir Thomas Pye, then commander in chief at Portsmouth, was President of the court-martial, which did not in any degree interfere with his official engagements, although there were thirty sail of the line lying at Spithead. But such was the temper and general feeling of those times, that to have excluded a man of rank and high respectability from sitting on the court-martial,

particularly in the port over which he presided, while a substitute for him was brought from a station 300 miles distant, would have excited emotions and risked consequences such as the writer does not think proper to describe.

But, without meaning to impute any thing improper to any of the members of this court-martial, who are

“ All—all honourable men,”

one may be permitted to observe, that there is to be found sometimes among those connected with the most liberal and exalted profession, and of the highest rank too, men who are strongly infected with the mechanical disposition of looking with jealousy upon any man introduced to professional rank by any other means than the common *routine*; and such jealousy is apt particularly to attach itself to any individual distinguished by success. Owing to several circumstances, Sir Home Popham has outstripped the ordinary course of professional advancement. His appointment to the command of an expedition so important as that which captured the Cape of Good Hope, while so many senior officers, and particularly so many Admirals, were unemployed, might have given pain. We are aware that such a cause could not excite discontent among such men as were members of this court. A feeling so unworthy could not find a moment's

residence in their bosom. It is impossible that ~~we~~ could entertain the suspicion, but it is not without the scope of possibility that such a suspicion might exist *elsewhere*. The Admiralty had the appointment of the court-martial.

Were I to notice the several animadversions that have appeared against Sir Home Popham since the trial, I should much exceed the limits which properly belong to a Preface. There are, however, some which I cannot persuade myself to overlook; and I notice them much more from a desire to mark the *animus* which they indicate, than from an apprehension that should urge me to guard against any injury they are likely to produce.

Efforts have been industriously made, the motive for which is quite obvious, particularly to connect the name of Sir Home Popham with that of Mr. Alexander Davison, because the character of that gentleman has been recently impeached. But the connection of Sir Home Popham with Mr. Davison, is not more intimate than that which Lord Nelson had with that gentleman---Mr. Davison was the banker and agent of both.

Several productions have appeared in some of the daily prints, which were *meant* as a display of

wit, and an expression of ridicule, with regard to Sir Home Popham's visit to Lloyd's Coffee-house, where his reception was so truly flattering.—But the forced humour of these writers rests upon erroneous assertion.

This much-censured visit was not “without pre-  
cedent;” nor did it betray a “singular vanity.” The censors forget, that that man whom censure dare not touch---whom praise could not elevate ---that Lord Nelson paid a similar visit to Lloyd's, and met a similar reception. But the enemies of Sir Home Popham are indignant that the merchants of London should testify their gratitude to a man who has opened a new and most important market for their trade! Those who are willing to persecute Sir Home Popham, feel sore to observe, that his fellow-citizens are anxious to sustain him;—it galls the feelings of those who would crush the man, that he cannot be deprived of the esteem and approbation of his countrymen.

Among the charges particularly pressed against Sir Home Popham, I have heard it frequently stated, that it was quite presumptuous in him, with such a force as he had, to have calculated upon the conquest, or even upon being able to maintain his station in South America, *against* the population of that country. But Sir Home had no more reason

to calculate upon acting against the population of South America, than Lord Hood had, at Toulon, upon acting against the population of France. On the contrary, both officers had the strongest assurances of meeting a favourable disposition, and a cordial cooperation, from the great body of the people in those countries, which, upon such assurances, they were encouraged to invade. Sir Home Popham did not calculate upon being received as a person acting *against* the people, but *for* them: and so he was received at the outset---and so for a considerable time treated. But the treachery of the Spanish officers, seconded in its operation by the much viler treachery of some of his own countrymen, served to produce an abatement of the confidence which Sir Home Popham experienced among the Americans. The combined treachery owed its success, in a great measure, to an unfortunate accident:---an English vessel, which took out a number of letters and London newspapers, was wrecked off Monte Video, about the end of the month of July. Among these letters were several from Lady Popham, and from Sir Home's banker; containing a very ample detail of the means employed by the Ministry at home to depreciate his object, expedition, and character. These letters and papers fell into the hands of the Governor of Monte Video. As soon as Sir Home Popham was apprised of this circumstance, he applied by letter to the Governor



for the restitution of his private letters, or at least that the contents of them should be concealed. After some correspondence, the Governor promised to comply with Sir Home's request: but this promise was fulfilled with the same fidelity that distinguished the other Spanish officers;—Proclamations were immediately published by the Governor of Monte Video, by Puerdon, and by Liniers the Spanish officer who had broken his parole—which Proclamations were addressed to the inhabitants of South America, deprecating any confidence in the assurances of Sir Home Popham, and describing him as the commander of a mere buccaneering expedition. These Proclamations teemed with extracts from the Ministerial newspapers of this country; in which extracts the character of Sir Home Popham was abused, the object of his expedition ridiculed, and the authority upon which he professed to act altogether disowned. Is it wonderful that such descriptions, seconded by the language naturally to be expected, under the circumstances of the times, from Lady Popham, and Sir Home's private friends—extracts from whose letters were inserted in the Proclamations—should have operated to produce a very serious impression upon the public mind in South America? This impression was indeed still further promoted by statements assuming the face of authority which were transmitted to America and circulated among the inhabitants, by means for

which it is scarcely possible to account; for it is almost impossible to suppose that the political prejudice which might prompt some men to seek the disgrace of an officer, could urge any Englishman to risk the destruction of an English fleet and an English army, with the loss of a valuable conquest\*. It is, however, the fact, that, in consequence of the combined means I have alluded to, the affection conciliated by Sir Home Popham among the Spanish people was considerably abated, while the terror inspired in the Spanish army was almost altogether done away. For the hope of English protection, and the promise of English reinforcements—which were held out by Sir Home Popham—being proclaimed delusive, the friends of England were induced to withdraw their confidence from that officer, while the Spanish army was encouraged to act against him; thus the alienated confidence of the people of America from Sir Home Popham, and the attack which the Spaniards ventured to make upon the English army, which attack terminated in the recapture of Buenos Ayres, may not unfairly be attributed to the operation of party spirit and private pique in England.

Such, indeed, has been the melancholy consequence of a line of conduct which originated in

\* To the value of this conquest, the late, as well as the present, Administration bore ample testimony, in the reinforcements they sent out, and the means they employed to retain it.

personal and political hostility to Sir Home Popham, that it has been found difficult, if not impossible, to restore the esteem for and confidence in the English character, which that officer experienced at the outset, and which was alienated by the unworthy means to which I have alluded.

That party spirit should proceed to such an extreme, as to seek the gratification of its object even at the expence of the country, cannot be too much reprobated. But history furnishes so many instances of the perverse character and mischievous direction of that spirit, that one would not be justified in rejecting the rumours afloat with regard to the recapture of Buenos Ayres, and the prosecution of Sir Home Popham.

I have heard it stated, that had not Sir Home Popham experienced the particular patronage of Mr. Pitt—had he not been an active and ardent supporter of that Minister—had he not freely and frequently condemned the general character of Lord St. Vincent—had he not written some pamphlets against the naval administration of that nobleman—his request for reinforcements, in his letter of the 30th of April (for which, see Appendix), *might* have been attended to; those reinforcements *might* have reached him in due time to prevent the recapture of Buenos Ayres, and he *might* have escaped prosecution.

It can hardly be questioned by any dispassionate man, that Sir Home Popham's prosecution was the effect of political prejudice, when one contrasts the treatment he experienced with the conduct observed towards Sir David Baird, who sent the troops under his command from the Cape of Good Hope *without orders*, and who was, of course, *particeps criminis* in the offence charged against Sir Home Popham. Indeed, had not Sir David Baird consented to dispose of his troops *without orders*, we should never, in all probability, have heard of the expedition to Buenos Ayres:—yet Sir David Baird was not brought to trial; nor was it ever understood that such a thing was intended. But scarcely had the late Admiralty taken possession of their offices, when an order was issued for the recal of Sir Home Popham; and on the instant of his arrival in London he was arrested, and sent to trial. Whence this difference?—Why, Sir David Baird was no politician; he had not politically offended the late Ministry\*. In considering this point, the controversy which prevailed some time since relative to the eligibility of naval or military officers to sit in the House of Commons, naturally occurs to my memory. I remember a great outcry to have been raised against those who maintained the negative of that proposition. Now, without entering into the merits of this question, I must say, that if a naval or military officer shall,

\* Was it the object of Ministers—to punish a crime, or to persecute an individual?

by taking a decided course in politics, subject himself in his professional pursuits to the operation of party resentment, it would be more magnanimous in those who raised the outcry I have referred to, at once to decree that naval or military officers should not be allowed to sit in Parliament.

In reviewing the whole history of Sir Home Popham's case, from the institution of the Committee of Inquiry against him (for the Report of which Committee, see note A. of the Appendix)—in contrasting the conduct pursued respecting this officer, with that of Mr. Pitt towards those officers who opposed his politics, and who became liable to the operation of party resentment had he thought proper to set it in motion—I cannot help expressing my astonishment and regret: I am astonished at and I regret the inconsistency between the conduct and professions of those who have so long pursued Sir Home Popham with such unremitting severity.

Sir John Jervis, who was a known and zealous Foxite, attacked Teneriffe *without orders*, failed in the attack, lost the lives of several men and the arm of Lord Nelson; yet Mr. Pitt instituted no prosecution against him: and in that he acted wisely and liberally. He justly estimated the vital spring of the navy—he felt the absurdity of attempting to limit the spirit of enterprise by the standard of discipline: but, had he been disposed to indulge political

resentment against a naval officer, he might have directed the prosecution of Sir John Jervis, and masked that resentment with the profession of a solicitude for discipline. With very little inclination to pronounce any thing in the shape of panegyric on Mr. Pitt—with the strongest disposition to prefer the character, principles, and views, of his great political opponents, to those which marked his career—I must say, that the comparison in this respect is very decidedly in Mr. Pitt's favour. But Mr. Fox was no more, at the time Sir Home Popham was prosecuted; and the magnanimous spirit of that great and good man could have had no influence upon those by whom that prosecution was instituted.—And I have the satisfaction to think that Mr. Sheridan had no connection with this transaction.—No, that illustrious man, however his circumstances may have exposed him to the slander of the sordid, however his talents may have excited the jealousy of the envious; or however his manly independence may have offended the pride of the arrogant, could never be persuaded to incur the censure of the liberal and the enlightened by concurring in any act of public injustice. He has never been found among the advocates for persecution. Mr. Sheridan would not, I am confident, for the gratification of any party, or of any person, lend the sanction of his name to such proceedings as were taken against Sir Home Popham.



In order to shew the nature and effect of the private pique and party prejudice which operated against Sir Home Popham, it would be only necessary to mention, that not one of the appointments made by him, in virtue of his authority, was confirmed by the Admiralty which acted under the late Administration. The appointment of Captain King to the office of post-captain was not confirmed by the late Admiralty, who suffered him still to continue as master and commander, although the merits of that officer were unquestionable; but his attachment to Sir Home Popham was the obstacle to his preferment. The confirmation of Captain Percy's appointment was also refused; until the interest of the Northumberland family, with which this officer is connected, interfered, and counteracted the objections arising out of the partiality of Sir Home Popham.—But the most remarkable evidence of prejudice operating to thwart the wishes of Sir Home Popham, and to favour the views of his known enemies, appears upon a consideration of the circumstances which occurred at the Cape of Good Hope. At least, it will not be pretended that any censure should attach to this officer for the conquest of the Cape; on the contrary, I believe the most overstrained malignity will not deny that his conduct in that instance was meritorious. Yet how did the Admiralty act to-

wards him? Those appointments which, according to immemorial and invariable usage, belong to the commander who first takes possession of an enemy's colony, were of course made by Sir Home Popham upon the reduction of the Cape; but the moment the late Administration received intelligence of the capture, these appointments were reversed. The master-attendant, Mr. Browne, who is a man of unimpeached and respectable character, was, together indeed with all the civil officers appointed by Sir Home Popham, immediately superseded, and persons, recommended by Lord St. Vincent, appointed in their room. Does not the mere statement of such a fact preclude the necessity of any argument to shew that Sir Home Popham was peculiarly the object of prejudice; and that it was resolved to render the operation of that prejudice more severe, by immediately combining with it the triumph of his particular foes?

Much has been said to countenance the rumour; that some prejudice prevails in the Navy against Sir Home Popham: I cannot believe the fact. I have never heard it stated, but by the decided adherents of his principal persecutor—by those who are jealous of his fame; envious of his talents, or irritated by his political conduct. But men who feel a prejudice strongly, are very apt to believe it general; and hence, perhaps, the confidence with

which its existence is asserted. No dispassionate man, however, can suppose it possible, if at all acquainted with the character of the officers of the British Navy, and with the little, narrow, illiberal principle upon which the alledged prejudice is said to rest. It is impossible that Sir Home Popham's advancement out of the ordinary rule of promotion could create any discontent against him among men of exalted and generous minds. If that, indeed, were the ground of objection, it would apply equally against Lord Nelson, Sir Sydney Smyth, and many other distinguished officers. Another cause of objection is stated to arise out of the circumstance of Sir Home Popham's having, while a lieutenant of the navy, commanded a merchant vessel during peace: but this objection, again, would be equally applicable to Lord Nelson, Sir Sydney Smyth, and numberless others. In point of fact, some of the most celebrated officers in our naval records have occasionally engaged in the merchant service. It is, indeed, an historical fact, that the greater part of those who commanded the fleet which conquered the Spanish armada were, even at the time of that renowned conflict, the commanders of merchant vessels. But modern history furnishes such a brilliant instance of skill and valour in a mercantile commander, as any naval officer would be proud to avow:—I mean in the conduct of Sir N. Dance. Without, however, resorting to

precedents, I would, upon the principle, appeal to the good sense, manly feeling, and liberality, of the country, whether it would be fair, rational, or politic, to confine a deserving lieutenant in the navy to half-pay and inactivity during peace, by denying him the opportunity of benefiting himself and the country, in accepting the command of a merchant-vessel? This, in fact, is the situation in which it would be peculiarly for the interest of the navy that unemployed lieutenants should engage during peace, for the advantageous purpose of keeping them in active service, and extending the stock of their practical knowledge. But, to return to the professional prejudice against Sir Home Popham, I think it utterly incredible, and believe the assertion of its prevalence was only made with a view to swell the outcry with which it was hoped to hunt down this meritorious officer.

Nothing remains to be noticed to which, in this Preface, I think it at all material to call the attention of the reader, with the exception of some articles which have recently appeared in a newspaper known to be devoted to the views of Lord St. Vincent, the principal proprietor of which is, indeed, the intimate personal acquaintance, and frequent companion, of that nobleman. In that paper, an attempt has been made to excite an outcry against the reappointment of Sir Home Popham. In some

productions it has been endeavoured to cast ridicule upon the idea, and in others to render the act odious, because "a naval court-martial have pronounced a sentence against him." What, however, did this sentence amount to?—A "severe reprimand"—very severe indeed! but it did not go the length of forbidding the reappointment of this officer. This, I know, is asserted as a corollary from the sentence; but I deny the justice of the assertion. For, if that assertion were just, it would seem that any sentence pronounced by a court-martial should be tantamount, in its effect, to that of cashiering an officer; which is the severest sentence short of death. —But the assertion is not to be supported, upon any principle of professional practice or common equity. It is not to be maintained that the court in this instance meant more than it expressed, for that would imply a reflection upon their firmness and disposition to speak their purpose frankly, and, God knows, that reflection cannot be justified by their conduct. But whatever might have been the sentence of this court, it must be established, that that which belongs not to any human tribunal is attributable to a naval court-martial, namely, that "its judgment is unerring," before it can become a matter of course to condemn any individual, or set of individuals, for impeaching or acting against such a sentence. Let it, besides, be recollected by what Board of Admiralty the members of the court, which tried

Sir Home Popham, were appointed. When the accuser appoints the tribunal that is to decide upon the accused, will any man seriously maintain that such a decision is entitled to implicit confidence? But still more—Will any man, under the auspices of the British constitution, venture to assert that the sentence of such a tribunal ought to operate to the eternal proscription of the accused? The very idea is preposterous; and that party would be contemptible in intellect and pusillanimous in spirit, which should act under the influence of such an idea; but still more if, through a fear of exciting the outcry, or inflaming the resentment, of an opposite party, it should shrink from patronising an advocate who, by devotion to its views, had rendered himself obnoxious to the prejudice of that party.

SINCE writing the above, Sir Home Popham has been appointed to a high and confidential office; and a most extraordinary consequence indeed is said to have followed from this appointment. It is rumoured that some officers who are to act under him have remonstrated against it, and communicated their remonstrance to the commander in chief, accompanied by a menace of deserting the fleet upon a certain event. To give entire credit to this rumour, requires an opinion of officers who have earned a character in the British navy very different from that which I entertain, or should be

willing to adopt. What! is it possible that any men who have arrived at high rank in a liberal profession, could be impelled, by any description of prejudice, to enter into that sort of combination which the law punishes in journeymen mechanics? But what degree of respect for discipline or subordination, can be entertained by any officers capable of originating such an example? I will not say, that such an act amounts to mutiny, but certainly it is some approach to it, and indisputably contains the elements of that crime. If officers are allowed to remonstrate against the appointment of superiors in command, what becomes of the prerogative of those with whom the right of appointment rests? It would be rather a novel proceeding, to have all the officers of a fleet consulted as to the appointment of the commander under whom they were to act! But if such a proceeding were resorted to, sure I am that, whether from the influence of personal, professional, or political prejudices, no officer of rank at present in the British navy could be nominated to the command of a fleet against whose appointment at least *three* dissentient voices would not appear. Let it, however, be recollected, that if this right of remonstrance by inferior officers against the appointment of their superiors be insisted upon, it might, upon the same principle, be contended that privates ought to be consulted also, at least as to the appointment of those

inferior officers: and then the question would arise, as to the election of officers according to the doctrine of the French Revolution; which doctrine, whatever be its merits, is certainly not reconcilable with the practice of the British Constitution. But are these men, who may naturally be suspected of having excited, or at least of not being indifferent to the effect of this remonstrance against Sir Home Popham, aware how the precedent might operate against themselves? It is *not unlikely* that a number of naval officers, including *perhaps* a majority of the Admirals, might be found at any time to remonstrate against the appointment of Lord St. Vincent to any command in the navy.---But the right of such remonstrance is altogether untenable, according to any recognised principle of the naval or military system of this country.

With regard to the observations which have been made, and the menace that has been thrown out, in the House of Commons, upon the subject of the engagements of Sir Home Popham and Sir David Baird, at the Cape of Good Hope, relative to the division of prize money, it will suffice to say, that similar engagements are uniformly entered into upon similar occasions:---I mean when the naval and military force cooperate. That such is the case, I would appeal to the experience of any officer acquainted with that description of service.



I would even ask of Lord St. Vincent, or Lord Grey, whether such arrangements for the distribution of prize money are not *generally* attended to, by naval and military commanders? But if, from the arrangement between Sir Home Popham and Sir David Baird, it be inferred that the former was influenced by sordid motives in his conduct respecting Buenos Ayres, I would only refer to his own DEFENCE, and particularly to the evidence of Captain King, who solemnly deposed that Sir Home Popham had it in his power to embark three millions of silver, which lay packed up on the quay at Buenos Ayres, if that officer had not preferred his duty as a naval commander to any thing like the acquisition of gain.

THE EDITOR.

**TRIAL**  
**OF**  
**SIR HOME POPHAM.**

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**U**PON Friday the 6th of March, 1807, this officer was brought to trial on board the *Gladiator* in Portsmouth harbour.

The following were the members of the court:

ADMIRAL YOUNG, President.

Vice-Admirals: Sir *E. Gower*, *S. B. Rowley*, —  
*Holloway*, and — *Stanhope*.

Rear-Admirals: — *Vashon*, Sir *T. Coffin*, Bart. and  
Sir *R. J. Strachan*, K. B.

Captains: — *Greaves*, — *Irwin*, *S. H. Linzee*,  
— *Scott*, and Hon. *C. Boyle*.

MOSES GREETHAM, Esq. Judge Advocate.

The following warrant was then read:

"Whereas, Captain Sir Home Popham left the Cape of Good Hope, without any orders to attack the Spanish Settlement on the Rio de la Plata, now this is to command you, that you take the said Sir Home Popham under arrest preparatory to his trial by Court-Martial for his said offence.— But you are not to put him to any greater inconvenience than is absolutely necessary, and therefore, having made the arrest, you are to take his word of honour for his appearance when the Court-Martial takes place, and you are to attend him to and from the said Court-Martial."

(Signed) THOS. GRENVILLE.

To John Crickett, Esq.  
Marshal of the Admiralty.

The Court opened about 11 o'clock, and almost immediately after strangers were admitted, the court was crowded. Sir Home Popham being introduced by Mr. Crickitt, the Marshal, took his station at the foot of the table; Mr. Harrison his counsel, Dr. M'Arthur, and his solicitor Mr. Lavie, stood on his right hand; Mr. Jervis the counsel, with

Mr. Bicknell the solicitor to the Admiralty, took their station on the right hand of the president. Sir Home addressed the president in the following terms.

“ Mr. President, I have thought it advisable to provide legal assistance upon this occasion, and beg leave to ask permission of this Court to have that assistance allowed to attend me during the trial.”

The PRESIDENT—“ Sir Home Popham, any assistance you require, the Court is very willing to allow you.”

The following list of Witnesses summoned upon the Trial was here read:

Lords Melville,  
—— Whitworth,  
Mr. Huskisson,  
Mr. Sturges Bourne,  
Mr. W. Marsden,  
Captains King,  
—— Edmunds,

Captains Dundas,  
—— Parker,  
Lieutenant Madden,  
Laughlan M'Lean,  
Messrs. Thomas Browne,  
—— Thomas Wilson,  
And Mr. Hollingsworth,

The order to Admiral Young from the Admiralty was then read, which was as follows ;

(COPY) ADMIRALTY ORDER,

*By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.*

WHEREAS, by an order, dated the 29th of July, 1805, Sir Home Popham, then Captain of his Majesty's ship *Diamant*, was directed to take under his command his Majesty's ships *Belliqueux*, *Raisonable*, *Diomedé*, *Narcissus*, and *Leda*, the *Espoir* sloop, and *Encounter* gun-brig, for the purpose of capturing the enemy's settlements at the Cape of Good Hope, in conjunction with the troops under the command of Major-General Sir David Baird, which settlements were surrendered to the ships and troops aforesaid, in the month of January, 1806 : And whereas it appears, by letters from the said Sir Home Popham to our Secretary, dated the 13th and

30th of April following, that with a view to attack the Spanish settlements in the Rio de la Plata, for which he had no direction or authority whatever, he did withdraw from the Cape the whole of the naval force *which had been placed under his command for the sole purpose of protecting it*; thereby leaving the Cape, which it was his duty to guard, not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects, or taking possession of any ships of the enemy, which might have put into any of the bays or harbours of the Cape or parts adjacent; all which he the said Sir Home Popham did notwithstanding that he had received previous information of detachments of the enemy's ships being at sea, and in the neighbourhood of the Cape; and notwithstanding he had been apprised that a French squadron was expected at the Mauritius, of which he informed us, by his letter to our Secretary, dated the 9th of April, 1806, only four days prior to his departure from the Cape for the Rio de la Plata.

And whereas it appears to us, that a due regard to the good of his Majesty's service imperiously demands that so flagrant a breach of public duty should not pass unpunished: And whereas by our order dated the 28th of July, 1806, Rear Admiral Stirling was directed to send the said Sir Home Popham to England, which he has done accordingly: And whereas Sir Home Popham was on his arrival put under an arrest by our order, and is now at Portsmouth awaiting his trial, we send herewith, for the support of the charge, the following papers, viz.

No. I.—The Copy of an Order from the Lords Commissioners of the Admiralty, to Sir Home Popham, dated the 29th of July, 1805, to take the ships therein named under his command, and to proceed to the Cape of Good Hope in conjunction with the troops under the orders of Major-General Sir David Baird.

No. II.—The Copy of a Letter from John Barrow, Esq. the Second Secretary of the Admiralty, dated the 2d of August 1805, signifying the directions of the Lords Commissioners of the Admiralty, to Sir Home Popham, to send a frigate to cruise on the East coast of South America, to procure intelligence of the enemy's movements, that he might be prepared against any attack.

**No. III.**—The Copy of a Letter from John Barrow, Esq. the Second Secretary of the Admiralty, dated the 14th of September 1805, signifying the directions of the Lords Commissioners of the Admiralty, to Sir Home Popham, to retain all the transports at the Cape of Good Hope, after the reduction of that settlement, until he shall receive further orders.

**No. IV.**—The Copy of an Order from the Lords Commissioners of the Admiralty, to Sir Home Popham, dated the 24th of September, 1805, to co-operate with Major-General Sir David Baird in the execution of his Majesty's commands respecting the sending off reinforcements of troops from the Cape of Good Hope to the settlements in India, and in the event of its being found absolutely necessary to forward to India the whole force under the command of Sir D. Baird, to protect it thither in the Diadem, &c.

**No. V.**—The Copy of an Order from the Lords Commissioners of the Admiralty to Sir Home Popham, dated the 21st of November, 1805, to send home, without delay, under a proper convoy, all the transports, which are not wanted for the conveyance of the troops, ordered to proceed to the East Indies.

**No. VI. and VII.**—Two Letters from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 13th and 28th January, 1806, giving an account of the capture of the Cape of Good Hope.

**No. VIII.**—A Letter from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated 22d February, 1806, giving an account of the Piedmontese French frigate having been spoken with in the neighbourhood of the Cape.

**No. IX.**—A Letter from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 4th March 1806, giving an account of the Volontaire French frigate, "the forerunner of Admiral Willeaumez's squadron," having put into Table Bay, and been taken possession of.

**No. X. and XI.**—Two Letters from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty dated 12th March 1806, on the possibility of being attacked by the enemy at the Cape.

**No. XII. and XIII.**—Two Letters from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 15th and 21st March, 1806, containing intelligence of the enemy's squadrons.

**No. XIV.**—A Letter from Sir Home Popham to William Marsden, Esq. Secretary of the Admiralty, dated the 9th April 1806, informing the Lords Commissioners of the Admiralty, that the intelligence received by *La Volontaire* appeared "materially to incline to the supposition that the West Indies was the destination of Admiral Willeaumez's fleet; but that General Anker, the Governor of Tranquebar, just arrived on his passage to Europe, had informed him that a French squadron was expected at the Mauritius."

**No. XV.**—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated 13th April, 1806, informing the Lords Commissioners of the Admiralty that, "on the 10th, he had received some intelligence respecting the weak state of defence of Monte Video, and Buenos Ayres, which so fully corroborated what he had already received from various quarters, that he had suggested to Sir D. Baird the expediency of sparing a few troops, for a short time, to bring a question of such importance to an issue." Also inclosing the Copy of a Letter, dated 13th April 1806, which he had written to the Governor of St. Helena, requesting him to spare some artillery men to accompany the expedition; and the copy of a letter to him (Sir Home Popham) from Mr. Waine, the Master and Owner of an American ship called the *Elizabeth*, dated 28th March 1806, respecting the strength of Monte Video and Buenos Ayres.

**No. XVI.**—A Letter from Sir H. Popham to William Marsden, Esq. Secretary of the Admiralty, dated 30th April, 1806, giving an account of his having sailed from the Cape on the 13th April; and inclosing the Copies of Letters which had passed between him and the Governor of St. Helena, on the subject of his sparing some troops to strengthen the expedition.

**No. XVII.**—A Letter from Sir H. Popham to William Mars-

den, Esq. Secretary of the Admiralty, dated the 19th July 1806, inclosing the Copies of Letters which he had sent to the Cape of Good Hope, requiring the Captains of any of his Majesty's ships, which might arrive at that place, to send him reinforcements.

No. XVIII.—A Letter from Sir George Shee, Bart. the Under Secretary of State for the War Department, dated the 20th February 1807, transmitting attested copies of two Letters from Major-General Sir David Baird to his Majesty's principal Secretary of State for the War Department, dated at the Cape of Good Hope, 14th April, and 15th May, 1806, stating the grounds upon which the attack of the Settlements on the Rio de la Plata was undertaken; and that the Cape being left destitute of naval force, the French frigate *Canoniere*, which had anchored in Table Bay, was thereby enabled to effect her escape.

And we do hereby require and direct you forthwith to assemble a Court Martial; which Court (you being the President thereof) is hereby required and directed to inquire into the conduct of, and try the said Captain Sir Home Popham for the offences with which he is charged accordingly.—Given under our hands the 2d March, 1807.

THOS. GRENVILLE.

H. NEALE.

THOS. F. FREEMANTLE.

To William Young, Esq. Admiral of the Blue, and second Officer in the command of his Majesty's ships and vessels at Portsmouth and Spithead.

By command of their Lordships,

WM. MARSDEN.

The orders addressed to Messrs. Jervis and Mr. Bicknell to attend the court martial, were read. For these orders see pages 70—71.

The Court was then sworn, as was the Judge Advocate, who afterwards presented and read the following documents, which are referred to in the charge.

No. 1.—*Copy of Instructions to Sir HOME POPHAM, dated 29th July, 1805 ; with one inclosure.*

(MOST SECRET.)

By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

THE Lord Viscount Castlereagh, one of his Majesty's Principal Secretaries of State, having, with his letter to us of the 25th of July, transmitted a copy of the instructions which, by command of his Majesty, he had furnished to Major-General Sir David Baird, commanding his Majesty's Land Forces on an expedition for attempting the reduction of the Cape of Good Hope, on the subject of which the Major-General has been directed to communicate with you in the most confidential manner, and to concert with you such measures as may be best for his Majesty's service : We transmit you herewith a Copy of the said Instructions for your information, together with Copies of the Instructions from the Secret Committee of the Court of Directors of the East India Company to the Governor and Council of St. Helena, and also to the officers commanding their ships, which you will communicate to the said Governor and Council, and to the said Officers, as you shall think it expedient ; and we do hereby require and direct you to communicate in the most confidential manner with Major-General Sir David Baird, to furnish him with all the information in your power, and to co-operate with him in the execution of his Majesty's commands, concerting such measures with the Major-General for proceeding against the Cape in the manner which may be most likely to ensure success.

On your arrival at Madeira, you will take under your command his Majesty's ships named in the margin,\* which you may expect to find there (and the Captains of which are directed to follow your orders), together with the transports, victuallers, and Indiamen ; and on leaving this island you will deliver to the several Captains and Commanders such

\* Belliqueux, Raisonable, Diomedé, Narcissus, Leda, Espoir sloop, Encounter gun-vessel.



*rendervous*, in case of separation, as may be judged most likely to enable you to arrive off the Cape with the whole of your collected force.

Upon the surrender of the settlement to his Majesty's arms, you are to use your utmost diligence, as far as may depend on you, to have the troops and recruits destined for India expeditiously reembarked, in order that they may proceed under the convoy of the *Belliqueux*, to their ulterior destination; notifying by them, or by the earliest opportunity which you can find, the surrender of the Cape to the two Commanders in Chief of his Majesty's Naval Forces in the Indian Seas, in order that the accustomed communication with the colony may again be opened. And you are further directed, as soon as the object of the expedition shall be accomplished, to send the *Raisnable* to St. Helena, with orders to take under her convoy, such of the vessels of the East India Company, and others, as may be collected at that island, and proceed with them to Spithead.

In the event of circumstances arising, which may make it expedient to desist from the enterprise, you are nevertheless to detach the India ships to their destination under the convoy of the *Belliqueux*, and to return with the remainder of your force and transports to St. Helena; and not finding there any fresh instructions, after waiting fifteen days, or longer if it shall be found expedient, you will proceed to Cork with the ships and transports under your convoy, unless you shall receive a different destination at Port Praya at St. Jago, where you are directed to call for further orders; leaving at St. Helena the *Raisnable*, to take under her convoy any of the homeward-bound East India ships that may either have arrived there, or be expected to arrive within one month. But in the event of none being there, nor any expected in the above-mentioned period, you are to continue the *Raisnable* under your command, and proceed as before directed.

Immediately after the surrender of the Cape, or in the event of circumstances arising which may oblige you to desist from the enterprise, you are to dispatch one of the small vessels, which will accompany you, to England, transmitting to our

Secretary for our information an account of your proceedings.  
—Given, &c. 29th July, 1805.

BARHAM.

Sir Hôme Popham, Captain of his  
Majesty's ship Diadem.

J. GAMBIER,

PH. PATTON.

By command of their Lordships,

JOHN BARROW.

Inclsure in No. I.—*Copy of Instructions, dated 25th July, 1805, to Major-General Sir DAVID BAIRD, for proceeding to the Cape of Good Hope.*

(MOST SECRET.)

SIR,

Downing-street, 25th July, 1805.

IN consequence of information having been received that the Cape is now defended by not more than from 1500 to 2000 regular troops, not of the best description, and that the militia and inhabitants look with anxiety for the arrival of a British force; and also from the facility afforded to an operation against that settlement from the troops now embarked and proceeding to India being applicable, without inconvenience, to this service in progress to their ultimate destination, it has been determined on to attempt the reduction of the colony by a combined operation of a force from Cork, added to that now on board the East India Company's ships at Falmouth.

I have the satisfaction to acquaint you, that his Majesty has been graciously pleased to select you for the command of this expedition, and that directions have been given to embark with the utmost dispatch the regiments named in the margin,\* in transports now laying at Cork, to be employed on this service.

As the troops cantoned in the neighbourhood of Cork have been directed to embark on board transports which are kept constantly in readiness, and victualled for six months, I have every reason to hope that the armament will be in readiness to put to sea in the course of a few days, and the whole naval and military force, when assembled at the Madeiras, will be as follows:

Raisable, 64 guns—Diadem, 64—Diomedé, 50—Bellé

\* 24th, 38th, 71st, 72d, 83d, and 93d foot.

queux, 64—Narcissus, 32—Leda, 32—24th Foot, 304—38th  
925—59th, 1000—71st, 768—72d, 730—83d, 750—89th,  
890—20th Light Dragoons, 221—Artillery and Artificers,  
320—Recruits, 546. 6654 Rank and File.

It is of the utmost importance that the object of this expedition should not transpire ; and lest the enemy should be apprised of your approach, the troops at Cork have been directed to embark, under your command, *for the Mediterranean.*

The India Fleet has been ordered to proceed at once *to India*; both Fleets will sail with these ostensible destinations, but having sealed orders to be opened in a certain latitude, directing them to rendezvous at the Madeiras, where the whole Naval and Military Force (including the Company's ships) will be directed to place themselves under your orders, and those of Sir Home Popham.

It is his Majesty's pleasure, that you delay as short a time as possible at Madeira, and that even there every precaution be taken to prevent the immediate object of the expedition from being made public, which will best be done by giving out that the Cork Fleet is to separate at a certain latitude for the West Indies.

Having departed from the Madeiras, you are to proceed at once to the Cape, unless the officer in command of his Majesty's ships should think it advisable to touch at St. Helena ; in which case you will use your utmost diligence to obtain the latest and most precise information with respect to the state of the Cape, its garrison, defences, means of subsistence, &c. and you will confer with the Governor of St. Helena (who is directed to render you every aid consistent with the security of that Island), as to the possibility of making any of the resources at his disposal, applicable to the success of the expedition.

Having arrived off the Cape, you will, if you should have no previous reason to suppose that your approach has transpired, endeavour, by a vigorous and immediate attack (having previously summoned the garrison to surrender), to avail yourself of the probable neglect of due vigilance and precau-

tion on the part of the garrison. As it is not impossible; however, that two French ships of the line, which sailed in May from Rochefort with troops on board, and which are yet unaccounted for, may have thrown themselves into the Cape with a reinforcement of troops, you will not rely with too much confidence in the enemy's means of resistance being confined to the numbers stated at the outset of these instructions. Should you be of opinion that the reduction of the place may be facilitated by opening a communication with the inhabitants and persons in authority, you are authorised and directed, in conjunction with the officer in command of his Majesty's Naval force, taking care not to waste too much time in such negociation, to grant to the garrison and the inhabitants such favourable and liberal terms of capitulation as may appear to you best calculated to acquire the possession of the place in the most expeditious manner, and with the least loss or hazard to the ships and troops employed on this service.

Upon the surrender of the place to his Majesty's arms, taking possession of it in the King's name, and duly attending to the stipulations of any capitulation which may be previously agreed on, you will take upon yourself, under the title of Lieutenant-Governor, the civil government of the settlement till his Majesty's further pleasure is declared, and continue to carry on the administration (preserving to the inhabitants the enjoyment of their private property, usages, and religion), as nearly as may be, according to the system laid down, and established by his Majesty's authority during the late war, and under which the colony enjoyed, till the period of its restitution, so much prosperity and happiness.

As I understand the troops now in garrison at the Cape are mostly Germans, and much disgusted with the Dutch service, you will take the earliest opportunity of inducing them to enter into his Majesty's 60th regiment, attaching them in equal proportions as supernumeraries to the regiments in garrison; until measures can be taken for transferring them under their own officers.

If, after using your best endeavours to procure the whole of these men for the King's service in the manner above di-

rected, any foreigners (not being French subjects) having so declined to engage, should nevertheless be willing to enlist for service in the East Indies, you will engage them for the service of the East India Company, according to the terms of enlistment usual in the European branch of their army, a statement of which you will receive herewith inclosed, and you will exercise your own discretion in the retaining or enlisting Flottenjots, in case the public service shall appear to you absolutely to require that this additional expence should be incurred.

As it is important that the Company's ships directed to cooperate in this expedition, and placed with a view to this special service under the orders of the Naval Officer in the command, should be delayed at the Cape for as short a time as possible, I have his Majesty's commands to direct that you use your utmost diligence to have the troops and recruits, destined for India, expeditiously re-embarked, in order that they may proceed under the convoy of the Belliqueux to their ulterior destination, notifying by them, or by the earliest opportunity which you can find, the surrender of the Cape to the several Presidencies in India, in order that the accustomed intercourse with the colony may be opened, and such supplies received, as may be required for the use of the settlement.

In the event of circumstances arising, either to discourage you from landing the troops, or, in the event of your having made good your landing, to determine you to desist from the enterprise (contingencies I trust equally improbable), it is his Majesty's pleasure (the India ships being detached to their destination), *that you do return with the remainder of your force to St. Helena, there to refresh the Troops and Squadron, and to receive further orders for the direction of your conduct.*

In case you should not find fresh instructions at St. Helena, continuing there not more than fifteen days, unless the refreshment of the squadron should render a longer delay indispensable, you will, at the end of that period, return to Cork, unless you should receive a different destination at Fayal, one of the Western Islands, where you are directed to call, and inquire for orders.

His Majesty has intrusted to you the conduct of the Military part of this service, under a full confidence in your expe-

rience, zeal, and discretion ; and his Majesty implicitly relies on your cultivating the most cordial good understanding with the Officer to whom the command of his Naval force has been confided :—the ultimate success of the expedition principally depending on the cordial co-operation of the respective services, his Majesty is persuaded that their united exertions will be such as to entitle them to his Majesty's gracious and unqualified approbation.

I have the honour to be, &c.

(Signed) CASTLEREAGH.

To Major General Sir David Baird, &c.

No. II.—*Copy of a Letter to Sir HOME POPHAM, dated 2d August, 1805.*

SIR, Admiralty-Office, 2d August 1805.

I AM commanded by my Lords Commissioners of the Admiralty to signify their direction to you, to send a Frigate to cruise on the East Coast of South America between Rio de Janeiro and Rio de la Plata, as soon as you shall have accomplished the object of the expedition on which you are about to proceed, for the purpose of procuring intelligence of the enemy's motions, in order that you may be prepared against any attack they may be disposed to make on the settlement.

I am, &c.

Captain Sir Home Popham. JOHN BARROW.

No. III.—*Copy of a Letter to Sir HOME POPHAM, dated 14th September, 1805.*

SIR, Admiralty-Office, 14th Sept. 1805.

I AM commanded by my Lords Commissioners of the Admiralty to signify their direction to you to retain all the transports under your command at the Cape of Good Hope, after the reduction of that settlement, until you shall receive further orders.

I am, Sir,

Your most obedient, humble Servant,

JOHN BARROW.

Captain Sir Home Popham, commanding His Majesty's Ship Diadem, at Madeira.

No. IV.—*Sent by the Belle Packet ; with one Inclosure.*

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

THE Lord Viscount Castlereagh, one of his Majesty's Principal Secretaries of State, having, with his letter to us of the 10th of September, transmitted a copy of instruction, which, by command of his Majesty, he had furnished to Major-General Sir David Baird, commanding his Majesty's Land Forces on an expedition sent out for the reduction of the Cape of Good Hope, respecting the sending of reinforcement of troops from thence to the settlements in India, we transmit to you herewith, a copy of the said instructions for your information and guidance ; and we do hereby require and direct you to co-operate with the Major General in the execution of his Majesty's Commands and the several points contained in the said Instruction, as far as it may be in your power, affording him every assistance in the selection of such transports as may be best suited to the service they are required to perform, and sending them under a proper convoy either to Bombay or Calcutta, according as the season of the year may afford the best prospect of a safe and expeditious passage.

In the event of its being found absolutely necessary to forward to India the whole force under the command of Sir David Baird (the Royal Artillery, Engineers, and Light Dragoons excepted, which, in this case, will return to England under the convoy of one of the frigates, together with the *Raisonable*; provided she shall not have left the station,) you are to proceed to India in the *Diadem*, taking with you the *Diomedes*; and having seen the said transports in safety to the place of their destination, return with the two ships above mentioned to the Cape of Good Hope or to St. Helena, according to circumstances, at one of which places you may expect to find orders for your further proceedings.

As it is of essential importance that such of the prisoners of war as it may not be expedient to suffer to enlist into the British service should be sent to Europe as speedily as possible, you are to use your best endeavours, in concert with the Major

General, to procure such tonnage of neutral vessels and others at the Cape for removing the said prisoners, as may prevent in as great degree as possible, the encroaching on the transports attached to the army, the whole of which would be required in the event of its being found expedient to evacuate the settlement.—Given under our hands the 24th September, 1805.

BARHAM,  
J. GAMBIER,  
P. PATTON,

Commodore Sir Home Popham.

By command of their Lordships,

JOHN BARROW,

Inclosure in No. IV.—*Copy of Instructions to Major-General Sir DAVID BAIRD, dated 10th Sept. 1805.*

(MOST SECRET.)

SIR, Downing-Street, 10th Sept. 1805.

THE last advices received overland from India, indicate a disposition on the part of Scindea, and the Rajah of Berar (in breach of the treaties subsisting between them and the East India Company) to enter into a hostile confederacy with Jeswunt Rao Holkar against British power. Should such an event actually take place, and, contrary to all just expectations, our armies in India experience any serious check, intelligence of which may probably reach you before it can be received in England, I have to convey to you his Majesty's commands, that in the event of your having acquired possession of the Cape, provided the exigency of the Company's affairs, upon the intelligence you may receive, shall appear to you to be such as to call for reinforcements, that you do without delay, and at the hazard even of reducing your garrison, for the time, considerably below what is required for the complete defence of the colony, detach the 38th and 93d regiments, consisting of the numbers stated in the margin,\* to the East Indies, transmitting immediate notice thereof to me, in order that adequate reinforcements may be sent out to join you.

It is his Majesty's pleasure that the above regiments do

\* 38th Regt. 991. 93d Regt. 882.



proceed in such of the transports now with you as may be best suited to the service, under a proper convoy (if possible a ship of the line, on which subject the officer in command of his Majesty's Naval forces will receive the instructions of the Lords Commissioners of the Admiralty) and that you do direct them to be landed either at Bombay or Calcutta, according as the season of the year and the state of the winds may afford the best prospect of a safe and expeditious passage.

Should you from any unforeseen circumstances be induced to desist from the enterprise with which you are charged against the Cape, you will under the contingency above-stated, in addition to the two regiments directed by my letter of the 26th of July to be in that case forwarded to India, make such further detachment as circumstances may appear to you to require; considering yourself as authorised and directed (if there should appear an adequate necessity) to proceed to India with the whole force under your command, the Royal Artillery, Engineers and Light Dragoons excepted, which you will return to England under convoy of a frigate.

The same precautionary principles which have induced his Majesty to direct the above instructions to be transmitted to you, have determined his Majesty to give authority to Marquis Cornwallis, or the person in the chief command of his Majesty's troops in India for the time being, to send to the Cape for reinforcements; and you are hereby directed to comply with any requisition you may receive to that effect.

You are not however to wait for such a requisition being made on you from Bengal, in case you should receive intelligence of the description alluded to in the former part of this dispatch; and in order to render it the more consistent with the security of the place, to detach largely from your garrison, you are to take measures as early as possible for sending to Europe such prisoners of war as you may not find it expedient to suffer to enlist into the British service; taking care to retain at the Cape as small a proportion as possible of the foreigners so permitted to enlist, should the number of your garrison be materially reduced; and with this view you may attach a considerable proportion of them to the regiments proceeding to India. I trust you will find

no difficulty in procuring tonnage at the Cape for the removal of the prisoners to Europe, without encroaching on the transports attached to your army.

I am, Sir,

Your most obedient humble Servant,

(Signed)

CASTLEREAGH.

Major-General Sir David Baird, &c.

No. V.—*Order to Sir HOME POPHAM, dated the 21st of November, 1805.*

(COPY.)

By the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

IN pursuance of the King's pleasure, signified to us by the Right Honourable Lord Castlereagh, one of his Majesty's Principal Secretaries of State, in his letter of this day's date, you are hereby required and directed, in the event of the surtender of the Cape of Good Hope to his Majesty's arms, to send home, without delay, under a proper convoy, all the transports which are not wanted for the conveyance of the troops ordered to proceed to the East Indies. Given under our hands the 21st of November, 1805.

P. STEPHENS,

J. GAMBIER,

W. DICKENSON.

To Commodore Sir Home Popham,  
Cape of Good Hope.

By command of their Lordships,

WM. MARSDEN.

No. VI.—*Copy of a Letter from Sir HOME POPHAM, dated the 13th of January, 1806.*

SIR,

Diadem, Table Bay, Jan. 13, 1806.

WHEN I address you for the information of the Lords Commissioners, on an occasion of such public interest and importance as the capture of the Cape of Good Hope, wh'c

is now in the possession of his Majesty's troops under that renowned General Sir David Baird, I consider it unnecessary to trouble their lordships with a detailed account of the proceedings of the fleet from St. Salvador, which however will be conveyed in another dispatch.

On the 3d instant we made Table Land, and on the 4th, in the evening, we reached our preconcerted anchorage to the eastward of Robin Island, though too late to do any thing, but take a superficial view of Blue Berg Bay, where it was proposed to land the main body of the army, making, however, a demonstration off Green Point, with the Loda frigate and the transports, containing the 24th regiment, which was certainly very well executed by Captain Honyman.

On the 5th, at three o'clock in the morning, the troops were put in the boats, and assembled alongside of the Espoir, but the surf ran so high that a landing was deemed totally impracticable, and consequently the troops returned to their ships, and I immediately accompanied the General on board the Espoir, for the purpose of making a close examination of the whole coast, from Craig's Tower to Losperd's Bay, on no part of which did it appear possible to land a single boat without extreme danger.

To the evil consequences of delay, in commencing operations on an enemy's coast, was to be added the very alarming possibility that some reinforcement might arrive by one of the various squadrons in motion when we left Europe, and therefore the General and myself were induced to consider, that however difficult the task might be of advancing from Saldanha Bay, yet it was an object of very great moment to accomplish a safe and speedy landing for the troops; and the instant the decision was made the Diomedé, with the transports of the 38th regiment, the cavalry ships, and a proportion of Artillery, under the orders of General Beresford, sailed for Saldanha, preceded by Captain King in the Espoir, having on board Captain Smyth of the engineers (an Officer well acquainted with the country) with a view of seizing the postmaster, and as many cattle as possible, antecedent to the arrival of the advanced division of the fleet.

Soon after the Diomedé weighed the westerly wind began to

abate, and on the 6th, in the morning, the officers examining the beach reported, that the surf had considerably subsided during the night; which indeed was so evident from the Diadem, when she stood in shore, that I requested Sir David Baird to permit General Ferguson and Colonel Brownrigg, the Quartermaster General, to attend the officer on his second examination; that their feelings might in some measure be balanced against those of professional men, and to satisfy the army that no measure, in which its safety was so intimately connected, should be determined on without due and proper deliberation.

In the mean time the Diadem, Leda, and Encounter, were placed in a situation to render the most effectual assistance, and the 71st and 72d regiments, with two field-pieces and a howitzer ready mounted, in the boats of the Reasonable and Bellicieux; rendezvoused along-side the two former ships, manifesting the most ardent desire for the signal from General Ferguson.

At this moment the Protector joined the squadron, and Captain Rowley, who was well acquainted with the anchorage, volunteered his services to place her to the northward, so as to cross the fire of the Encounter, and more effectually cover the landing of the troops.

Captain Downman at the same time went in shore with a light transport brig, drawing only six feet, to run her on the beach, if it would in any degree facilitate the debarkation of the troops.

At half-past twelve the Encounter conveyed, by signal, General Ferguson's opinion, that a landing might be effected, and the joy that was manifested in the countenance of every officer heightened the characteristic ardour of the troops, and under an anxiety probably to be first on shore, induced them to urge the boats to extend their line of beach further than was prudent, and occasioned the loss of one boat, with a party of the 93d regiment.

I report this event to their lordships with the most unfeigned regret, and it is doubly painful to me, because from all the efforts of an enemy, posted on an advantageous height, the army had only two men wounded in landing. This circum-

stance most fully proves how well the covering vessels were placed, and how ably their guns were served; and I trust my country will acquit me of having applied every expedient that could be devised, to prevent the occurrence of an accident which I so sincerely deplore.

The surf increased considerably towards the close of the evening, and about eight o'clock the landing of any more troops was stopped, but recommenced in the morning, when all the men and provisions, which the General judged necessary to take, were disembarked without a moment's loss of time.

Conceiving that a detachment of the squadron might be of service at the head of the Bay, I proceeded there with the *Leda*, *Encounter*, and *Protector*, and a division of transports; and I understand, from firing occasionally that evening over the bank, towards the Salt Pan, that the enemy was obliged to move from an eligible situation which he had before occupied.

On the following morning we discovered the British army advancing, with an unparalleled rapidity, over an heavy country, defended by a numerous train of artillery; and as I conceived a few fresh troops might be applied to advantage, I desired Captain Downman to land with the marines of the squadron, and two field-pieces, to await the arrival of Sir David Baird, at Reit Valley, who I very soon after had the pleasure of personally congratulating on the victory he had obtained over a General of such high military fame as General Jansen.

When the army was in motion to take up its position at Craig's Tower, and while I was proceeding up the Bay to anchor in the most convenient place for landing the battering train, a flag of truce was discovered coming towards the *Diamond*, by which I received the letter No. 1, from the Commandant of the Town and Castle; and the next day, in conjunction with Sir David Baird, the capitulation, No. 2, was accepted, and at six a royal salute fired from the squadron, on his Majesty's colours being once more hoisted on the castle.

Although their lordships will perceive by the detailed account of our transactions here, and the accompanying plan of the

different dispositions which were made, that no brilliant service fell to the lot of the squadron I have the honour to command, yet it is what I owe every officer and seaman to state, that, under the most laborious duty I ever experienced, their zeal never abated. To Captain Rowley I feel personally indebted for his readiness on every occasion, and I have no doubt but the highest satisfaction will be expressed of the conduct of Captain Byng, who commanded the marine battalion, by an authority far exceeding mine; and I inclose for their lordships' information, a copy of the report he made me on the conduct of the officers serving in that battalion, to which, exclusive of those belonging to the squadron, are added Captain Hardinge of the Salsette, and several other officers, now on their passages to India to join their ships.

Captain Butterfield and Lieutenant Cochrane, of the transports, were on all occasions ready to forward the service; and we are particularly indebted to Captains Cameron, Christopher, and Moring, of the Honourable Company's Ships the Duchess of Gordon, Sir William Pulteney, and Comet, who particularly exerted themselves in assisting the troops through the surf.

It is impossible for me to transmit any returns of the stores taken, by this opportunity, or of the state of the Bato of 68 guns, in Seaman's Bay; but it is, however, so strongly reported that the enemy has not completely succeeded in his attempt to burn her, that I have sent Captain Percy to take possession of her, and, if possible, to move her into safety, as the enemy has totally abandoned her.

Captain Downman, of the Diadem, will have the honour of delivering this dispatch to their Lordships; and from the intelligent manner in which I am satisfied he will explain every movement, and the causes by which I have been actuated, I trust he will require no further recommendation to their Lordships' protection.

I cannot, however, conclude this letter without assuring their lordships, that I know no instance where a stronger degree of confidence and unanimity has been exemplified between the two professions, than on the present occasion; and I humbly hope this circumstance, coupled with the meritori-

ous and successful issue of Sir David Baird's military dispositions, will recommend this armament to his Majesty's most gracious favour and protection.

I have the honour to be, Sir,

Your most obedient humble Servant,

(Signed)

HOME POPHAM.

William Marsden, Esq. &c. &c.

Admiralty, London.

No. VII.—*Copy of a Letter from Sir HOME POPHAM, dated the 28th of January 1806 ; with one Inclosure.*

His Majesty's ship Diadem, Table Bay,

SIR,

28th January, 1806.

IN my letter of the 15th, I had the honour to inform you that the *Raisonné* and *Belliqueux*, with two transports, having on board the 83d Regiment, sailed from this anchorage, for Gordon's Cove in False Bay, with a view of eventually proceeding to Muscle Bay, in case the line of conduct which Lieut.-General Jansens intended to pursue should make it necessary to land troops to the eastward, for the purpose of investing the strong position which he occupied at Hottentot's Holland Kloof, or cutting off his retreat into the Kaffer country.

The disposition, however, which the Lieutenant-General manifested in the first instance to resist every rational accommodation, appeared, on the 16th, to be considerably changed, by his expressing a desire to see Brigadier-General Beresford, whom Sir David Baird immediately dispatched to the Batavian camp, with ample authority to enter into negotiations with General Jansens.

I have now the honour to inclose to you, for the information of my Lords Commissioners of the Admiralty, the result of that negotiation, which has given to his majesty the entire possession of the settlement of the Cape of Good Hope with all its dependencies.

It may, however, be urged on a critical examination of the treaty, unaccompanied by any reflection on the horrors of a

long predatory war, that the terms granted were more liberal than the nature of the case required; but to the nice and discriminating judgment of their Lordships, the destructive consequences of such a warfare must be so evident, that I have no doubt but they will duly appreciate the advantages which have been obtained by the promptitude of Brigadier-General Beresford; who to the long established character of an excellent soldier, has added the no less enviable one of an able statesman.

I am, &c. &c.

To William Marsden, Esq.

HQME POPHAM,

*Inclosure in No. VII.—Articles of Capitulation, proposed by Lieutenant-General Jansens, Governor and Commander in Chief of the Batavian Forces at the Cape of Good Hope, to Brigadier-General Beresford, duly authorized by Major General Sir David Baird, K. C, and Commodore Sir Home Popham, K. M. commanding the military and naval Forces of His Britannic Majesty.*

ARTICLE I.

ARTICLE I.

As soon as this Capitulation is signed, the whole of the Settlement of the Cape of Good Hope, with all its dependencies, and the rights and privileges held and exercised by the Batavian Government, will be considered as surrendered by the Governor Lieutenant-General Jansens to his Britannic Majesty.

Agreed to,

II.

II.

The Batavian troops are to march with all their baggage, arms, &c. to a place hereafter to be agreed upon, and retain every thing, as well what belongs to the

The Batavian troops shall march from their present camp, within three days, or sooner if convenient, with their guns, arms, and baggage, and with all the ho-



state as to individuals, and be at liberty either freely to dispose of the same, or, if they prefer, take every thing away with them.

nours of war, to Simon's Town; they shall retain all private property, and the officers their swords and horses.

But their arms, treasure, and all public property of every description, together with the cavalry and artillery horses, must be delivered up. In consideration, however, of their gallant conduct, the troops will be embarked and sent straight to Holland at the expense of the British Government, and shall not be considered as prisoners of war, they engaging not to serve against his Britannic Majesty, or his allies, until they have been landed in Holland.

### III.

The Battalion of Hottentot light Infantry shall, with the rest of the troops, march to the place to be agreed upon; and there being disbanded by General Jansens, shall be at liberty to return to their own country.

### IV.

Under this Capitulation shall be comprehended all military men who, being wounded, have not been able to follow the army, and have

### III.

The Hottentot soldiers are to march to Simon's Town with the other troops; after which they will be either allowed to return to their own country, or be engaged in the British service, as they may think proper.

### IV.

These persons being already prisoners of war, any decision respecting them belongs only to the British Commander in Chief.

fallen into the hands of the British.

V.

The officers and men belonging to the Batavian army are to be subsisted at the expence of the British Government until they are embarked.

Agreed to.

VI.

The troops shall be transported to such ports of the Batavian Republic as shall be selected by Lieut.-General Jansens.

VI.

The troops, as in the Answer to the Second Article, shall be sent to some port in Holland.

VII.

The sick, who cannot be removed, with the other soldiers, are to be attended at the expence of his Britannic Majesty; and, when recovered, sent to Holland.

VII.

Agreed to.

VIII.

The inhabitants of the colony, who are comprehended in this Capitulation, are to enjoy the same rights and privileges as have been granted to those in Cape Town, according to the Capitulation of the 10th instant.

VIII.

Agreed to; with the exception of not quartering troops, the country not having the same resources as the town; and this right having been always an appendage to the Batavian Government.

IX.

The troops, whilst on board ship, are to be accommodated and fed, according either to the Dutch or English method, as is most beneficial to them.

IX.

The troops, when embarked, will be treated in every respect as British troops when on board transports.

X.

X.

Lieutenant-General Jansens Agreed to.  
shall be at liberty to send home a dispatch to Holland, and will receive assistance from the British Commanders in forwarding the same.

XI.

XI.

The Baron of Hogendorp, This Article must be left entirely to the discretion of the future British Governors or Commanders.  
having expended a great deal of money for the execution of agricultural plans, he shall be supported by the British Government in carrying his plans into execution; and the British Government shall grant unto him all such privileges as, from the public records, it shall appear the Batavian Government meant to have given him.

XII.

XII.

If, in this Capitulation, any thing doubtful may occur, it shall be *bona fide* construed to the benefit of the Batavian Government.  
If any doubt should arise as to any Article contained in this Capitulation, it shall be decided according to what shall appear to be just and honourable, without any preference to either party.

Given under our hands and seals this 18th day of January, 1806, at Hottentot's Holland.

(Signed)

J. W. JANSSENS.

W. C. BERESFORD.

Executed in the presence of

(Signed) J. A. TRUTER.

J. C. SMITH:

Ratified and confirmed in the Castle of Good Hope,  
this 19th day of January, 1806.

(Signed) D. BAIRD, Maj. Gen.

Commanding in Chief.

HOME POPHAM,

Commodore Commanding his

Majesty's Naval Forces.

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No. VIII.—*Copy of a Letter from Sir HOME POPHAM,  
dated the 22d of February, 1806.*

SIR, Diadem, Table Bay, 22d of Feb. 1806.

THE Rollo English brig letter of marque, which was taken by the Marengo, in company with the Belle Poule, in Carbone Bay, on the coast of Africa, came into this anchorage yesterday; and by a boat's crew dressed in French, the officer commanding the prize had not time to destroy his dispatches, *by which means two letters from Admiral Linois to General Jansens, the former governor at the Cape, and to the minister of marine at Paris, fell into my hands:* and I have the honour to transmit you, for the information of my Lords Commissioners of the Admiralty, translates of each. It appears evident, that he never intends to go again to the Isle of France, as the more urgent his necessities may be in point of provisions, the less likely he is to be relieved at that place.

This morning a Danish ship, from Copenhagen bound to Batavia, came into Table Bay, and the master of her said he had been boarded, the evening before, by the Piedmontie French frigate, which was bound to the Isle of France; she had fifteen ports on the main-deck, and was apparently a very large ship. I shall send this intelligence, with the copy of the letter alluded to, to Sir Edward Pellew, by the Whitby transport, which will sail in a day or two for Madras.

The letters from Admiral Linois are rather too equivocal to say exactly when he will arrive, but he may be expected from the beginning of March: and as the Northumberland is expected the beginning

of the ensuing month, I shall proceed immediately off the Cape with my whole squadron, to prevent if possible his falling in with such valuable ships as they will be to him, as well in point of the intelligence they would give him as the great supply of provisions and stores of which he stands so essentially in need of.

Under all the circumstances of the intelligence which I have received, I hope their Lordships will not consider that I act improperly in detaining the *Raisonné* a little longer here, especially as I learn, by the return of the *Leda*, that there are only two Company's ships arrived at St. Helena.

I have the honour to be, Sir,

Your most obedient humble servant,

To William Marsden, Esq.

HOME POPHAM.

&c. &c. &c.

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No. IX.—*Copy of a Letter from Sir HOME POPHAM, dated the 4th of March, 1806.*

SIR, Diadem, Table Bay, 4th March, 1806.

I BEG you will do me the honour to inform my Lords Commissioners of the Admiralty, that the *Diadem*, *Leda*, and *Diomedé*, anchored here yesterday evening; and at nine this morning, a ship was discovered coming from the southward under a press of sail, and soon after two more, one of which the station on the *Lion's Rump* reported to be of the line, and an enemy's ship. As the *Marengo* and *Belle Poule* were hourly expected, I thought it possible it might be them, and I directed the *Diomedé* and *Leda* to slip, and keep on the edge of the south easter, which had partially set in on the east side of the Bay.

At eleven, the headmost ship hoisted French colours, and stood towards the *Diadem*: and, by this time, I was satisfied from the judicious manœuvres of the ships in the offing, that they could be no other but the *Raisonné* and *Narcissus*.

At twelve, the French frigate passed within hail of the *Diadem*, when we changed our colours from Dutch to English, and directed her to strike, which she very properly did immediately, and I sent the Hon. Captain Percy, who was serving with me as a volunteer, to take possession of her: she proved

to be *La Volontaire*, the *forerunner of Admiral Willeaumez's squadron*: she is nearly eleven hundred tons, and mounts 46 guns, with a complement of 360 men on board.

I congratulate their Lordships, that, by this capture, detachments of the Queen's and 54th Regiments, consisting of 217 men, who were taken in two transports in the Bay of Biscay, are restored to His Majesty's service.

I have the honour to be, &c.

To Wm. Marsden, Esq. (Signed) HOME POPHAM.  
&c. &c. &c.

No. X.—*Copy of a Letter from Sir HOME POPHAM, dated the 12th of March, 1806.*

SIR, Diadem, Table Bay, 12th March, 1806.

I AM sorry to acquaint you for the information of my Lords Commissioners of the Admiralty, that I have been much disappointed in my expectation of raising the *Atalanta* French frigate after three trials: not but what I still think it possible by the casks, if we had not other objects of material consequence to attend to. Indeed, I had begun to prepare casks for the purpose, and had absolutely placed near two hundred, when the possibility of the enemy coming suddenly upon us, when a number of our men were absent, made me relinquish the idea of attempting again to raise her.

I trust their Lordships will not consider that any exertions have been wanting on my part to accomplish this object.

I have the honour to be, &c.

To Wm. Marsden, Esq. HOME POPHAM.  
&c. &c. &c.

No. XI.—*Copy of a Letter from Sir HOME POPHAM, dated the 12th of March, 1806, with one Inclosure.*

His Majesty's ship Diadem, Table Bay,  
12th March, 1806.

SIR,

I HAVE the honour to inclose to you, for the information of my Lords Commissioners of the Admiralty, the copy of a letter which I received from Sir David Baird, to order two transports for the service of enabling him to send to France the whole of the French prisoners in the garrison, on the same terms which I sent home those belonging to *La Volontaire*.

In complying with his request I only acted consistently with the principles which, on the occasion in question, I laid down myself, and I hope these will appear to their Lordships to be founded so much on public expediency that they will have the goodness to approve my conduct.

The disadvantages, if not the extreme danger, that would attend the detention of so many French prisoners, at a time when an attack on the colony is a possible case, and likely to be so for some days longer, are so evident that I trust it will be considered by their Lordships as unnecessary for me to enter into any detail on that subject.

The same opinion on the propriety of this arrangement will, in all probability, induce me to adopt similar measures, in the event of our being so fortunate as to capture any part of the squadrons, of which we have had intelligence, by their coming in here by small proportions to water and victual.

I have the honour to be, &c.

To Wm. Marsden, Esq. (Signed) HOME POPHAM.  
&c. &c. &c.

Inclosure in No. XI.—*Copy of a Letter from Sir DAVID BAIRD, dated the 8th of March, 1806.*

Government House, Cape Town,

SIR,

8th March, 1806.

ACTUATED by the strong reasons which have determined you to send the late captain, officers, and crew of La Volontaire French frigate direct to France, I have come to the same resolution with respect to Captain Bouchene and the other French prisoners on shore, and on board the Atlas transport.

I have in consequence to request you will be pleased to inform me, if tonnage for the accommodation of 346 persons, officers included, can be provided in transports; in which case I could wish the vessels to be got ready for the reception of the prisoners with all practicable dispatch.

It is my intention to enter into the same agreement with Captain Bouchene, as that you have made with Captain Brettel, late of La Volontaire.

I take occasion to mention, that the deputy inspector of hospitals has this morning reported that in consequence of the

admission of so many patients belonging to the Navy, the General Hospital is extremely crowded.

His Excellency Com- I have the honour to be, &c.  
modore Sir Home (Signed) D. BAIRD,  
Popham, &c. &c. &c. Major-General.

No. XII.—*Copy of a Letter from Sir HOME POPHAM, dated the 15th of March, 1806.*

SIR, Diadem, Table Bay, 15th March, 1806.

I BEG you will do me the honour of stating to my Lords Commissioners of the Admiralty, that Captain Arbuthnot, who commands the Cavalry Piquet at Saldanha Bay, has this day reported the arrival of a Whaler in that Bay, who on the 25th of February, in the lat. 33deg. 50 min. south, and long. 50 min. east of Greenwich, fell in with eight sail of ships, steering about E. S. E. ; he thought they were English East India ships, but the weather was very hazy, and he was not long in sight of them.

Admiral Willeaumez's squadron consists only of seven sail, but they may have taken a prize, or this may be a small convoy of Indiamen, of which however their Lordships will be able to judge pretty accurately, by reference to the departure of any convoy from Europe, whose date will coincide with the date and position of the present eight sail of ships.

I have the honour to be, Sir,

Your most obedient humble servant,

Wm. Marsden, Esq. (Signed) HOME POPHAM.  
&c. &c. &c.

No. XIII.—*Copy of a Letter from Sir HOME POPHAM, dated the 21st of March, 1806.*

SIR, Diadem, Table Bay, 21st March, 1806.

AFTER concluding my letter yesterday afternoon, a brig, under Hamburgh colours, arrived from Tonnigen; she had been boarded by Admiral Willeaumez's squadron, consisting of seven sail, on the 25th ultimo, in latitude 33 deg. 23 min. longitude 6 deg. 10 min. east; on the same evening, it blew very hard from the S. S. E. and the following day he saw the squadron lying to.



Brown, that he is directed to remain forty-eight hours, and then return to False Bay.

I have the honour to be, &c.

Wm. Marsden, Esq. (Signed) HOME POPHAM.  
&c. &c. &c.

No. XIV.—*Copy of a Letter from Sir HOME POPHAM, dated the 9th of April, 1806.*

His Majesty's ship Diadem, Table Bay,  
9th April, 1806.

SIR,

AS the season is now very far advanced for lying in this Bay, and the weather particularly unsettled for the time of the year, I propose quitting it with the squadron immediately ; more especially as, from the length of the time that has elapsed since we heard of Admiral Willeaumez's fleet, it is very improbable, consistent with the situation he was then in, that he should come here at present.

*To determine his position at the moment would be impossible ;* and it is almost equally difficult to decide on the best mode of applying the exertions of the squadron, the ensuing two months, to the greatest advantage.

The intelligence we received by the Volontaire, and which has already been transmitted to you for their Lordships' information, appears materially to incline to the supposition that the West Indies is the destination of Admiral Willeaumez's fleet ; but General Anker, the late governor of Tranquebar, who is just arrived here on his passage to Europe, informed me, in the course of conversation, *that a French squadron was expected at Mauritius, but that it was impossible for that island to supply any flour to it, without looking to Rio de la Plata, or the coast of Brazil, for a supply ; on which consideration I think employing the squadron in cruising a short time off that coast instead of remaining idle, will be a disposition fraught with some advantages, and which I hope will appear so evident to their Lordships as to induce them to approve of the measure.*

As this letter is to be conveyed by a foreign ship, I shall not enter into any minute detail, but say it is my intention to proceed off Rio de la Plata in the first instance, to send the *Raisonable* to her destination by the time fixed ; the Dio-

mede to Rio de Janeiro to procure rice for the colony, of which it is in the greatest want, and return immediately to False Bay with the other ships, unless I should hear that Admiral Linois is at St. Catharines, preparing to cruise for the outward-bound East India trade ; in which case I shall endeavour to intercept him, *if it does not infringe on the time of my return to the Cape to receive their Lordships' commands in consequence of the dispatches conveyed by the Espoir.*

When I have the opportunity of a safe conveyance to write more fully to their Lordships, I hope the additional reasons I shall give will be sufficient to satisfy their Lordships of the expediency of the measures which I am now about to adopt. I have the honour to be, &c.

Wm. Marsden, Esq. (Signed) HOME POPHAM.  
&c. &c. &c.

This letter referring to one of the 20th, Sir Home Popham said, that he should, in his defence, take the liberty of producing the letter of the 20th.

Admiral Rowley thought it might as well be produced now, as it was connected with the other.

Sir Home observed, that he had not the copy of it on board.

No. XV.—*Copy of a Letter from Sir HOME POPHAM, dated the 13th of April 1806 ; with two Inclosures.*

SIR, Diadem, Table Bay, 13th April, 1806.

I HAD the honour to address you on the 9th instant, for the information of the Lords Commissioners of the Admiralty, and as stated in that letter, I weighed on the 10th with a light breeze ; but it soon after fell calm, and I was obliged to anchor in the outer part of the Bay.

*In the evening I received some intelligence respecting the weak state of defence which Monte Video and Buenos Ayres were in, and I returned to the shore the following morning to communicate it to General Sir David Baird,*

This intelligence so fully corroborated *what I had already received from various quarters*, that I suggested the expediency of sparing a few troops for a short time to enable us to bring a question of such importance to an immediate issue.

I hesitate not to confess to their Lordships, *that I urged it with every argument in my power*, from a conviction of the great and splendid benefits which the country would derive by a conquest of such a nature at this moment : *embracing considerations of various advantages, not only to the Mother Country, but to this Colony*, which has been threatened, more or less, for many years with famine, owing to the failure of its crops.

The result of my enquiries *for many years respecting South America in general and Buenos Ayres in particular*, have been presented to his Majesty's Government ; and as *it was at one time settled that I should be sent there*, I took every pains to form a detailed project for a combined operation, and which I had the honour of giving to the late, and sending to the present, First Lord of the Admiralty.

After Sir David Baird had seriously considered this subject, and consulted with General Beresford on the occasion, he determined to accede to my proposition ; and the 71st Regiment was ordered for embarkation, under the direction of Brigadier General Beresford. And I have the pleasure to inform their Lordships, that the whole of that regiment, with its detachment of artillery, horses, and all its other departments, are embarked, and we only wait a breeze to sail ; and the concurrent testimonies of various people, whom we have examined, gives us the greatest prospect of success.

If our expectations are realized, I shall lose no time in bearing myself the dispatches for England. Sir David Baird will notice this to Lord Castlereagh, and assign the reasons on which such a decision was founded ; one of the principal ones, however, is that of conveying to their Lordships the true situation of the country, its commerce, resources, disposition of the inhabitants, and the extent to which its exportations may be carried ; with a scale also of the consumption for the manufactures of Great Britain.

Although these are points on which I cannot doubt but their Lordships have collected a great deal of information, yet I consider what may be personally conveyed by an Officer, whose sole ambition is to obtain their Lordships' confidence and good opinion, will be more general, more correct, and more specific than any which can be obtained by other channels ; and as Captain Rowley is the next Officer on the list to myself, I considered that the service would be deprived of little dignity, with respect to rank, and certainly none in point of zeal, judgment, and ability.

I have only presumed to say a few words on the advantage which we may derive by the exports from this country, by the channel of importation which it opens up a navigable river of many hundred leagues to supply several millions of inhabitants with the manufactures of the United Kingdom :—There is, however, another, not of less consequence on any consideration, which is that of depriving the enemy of this most valuable trade, which is carried on entirely under neutral flags.

These prospects not only apply to Great Britain, but the communication with this Colony will remove all idea of famine in future, and be attended with vast reciprocal advantages far beyond any calculation of risk in the present undertaking.

This letter will go by a neutral ship, but I hope under such a precaution as will almost insure its safe delivery ; I will, however, not enter into any further particulars, but state, for the information of their Lordships, that the moment the place is taken, I shall send to Rio de Janeiro ; because it may enable his Majesty to give discretionary powers to any troops bound to India, touching at Janeiro, to proceed to La Plata, if the Commanding Officer hears that it is in our possession.

I will also send notice to St. Helena, as the Governor may be induced to spare us a few troops from that Island ; and I have already advised him of this enterprise, hoping that, in the first instance, he may be able to detach one hundred artillerymen in the Georgiana packet, and at the same time acquaint me he has information of a man-of-war from England, for his June convoy, which will prevent the necessity of my sending the Raisonable or another ship there from La Plata.

I inclose to their Lordships one of the letters which I have

received from the master and owner of an American ship who is now on board the Diadem ; and the result of many examinations is, that there are not above five hundred regular troops at the two places, some provincial cavalry and militia ; that the walls of Monte Video are in a very ruinous state ; and the inhabitants disaffected beyond any calculation.

I hope the view I have given their Lordships of my conduct, and the motives by which I was induced so strongly to press on Sir David Baird the expediency of undertaking a project of zeal, enterprise, and exertion, promising so much honour and prospects of advantage to the Empire, will be considered by their Lordships as *far preferable to the alternative of allowing the squadron I have the honour to command to moulder away its native energy, by wintering in False Bay, and eventually become paralysed, after remaining so long as it has done in a state of cold defensive inactivity.*

I have the honour to be, &c.

(Signed) HOME POPHAM.

To Wm. Marsden, Esq. &c. &c.

Inclosure (No. 1.) in No. XV.—*Copy of a Letter from Sir HOME POPHAM to the Governor of St. Helena, dated the 13th of April, 1806.*

His Majesty's ship Diadem, Table Bay,

SIR,

13th April, 1806.

I HAVE the honour to acquaint you, that, from various informations I have received from different people of the defenceless state of Monte Video, Buenos Ayres, and their dependencies, I have deemed it expedient, with the squadron under my command, assisted by his Majesty's 71st Regiment, to proceed on an expedition against those places, not doubting in the smallest degree of such success as will add lustre to his Majesty's arms, distress our enemies, and open a most beneficial trade for Great Britain.

My object in addressing your Excellency on this subject is, to request you will spare a company of Artillery, or any other force you may think proper, to aid this enterprise ; and that you will have the goodness, with your usual zeal for the service of your country, to lose not a moment in forwarding them in the Georgiana packet, as the most expeditious mode.

I am prompted to make this application from a conviction that such an acquisition as the capture of those places would give you high satisfaction, inasmuch as they will, among their numerous advantages, in a certain degree add to the commerce and safety of the island you govern, as well as be an additional safeguard to the trade of the Honourable East-India Company.

I take the liberty to trouble your Excellency with a dispatch to the Lords Commissioners of the Admiralty, under a flying seal, that you may read them, and be more fully acquainted with my reasons and intentions than I am at present in my hurry able to inform you of.

I beg you will do me the honour to state what prospect you have of any ship of war arriving at St. Helena, for your June convoy, from any communication you may have lately had from Europe, as it would make a material difference for me to send one of my small squadron to perform that service ; but if you have not a certainty of such an event, I will take care to provide a man-of-war to be at St. Helena in June.

I feel assured that I need not use any arguments to convince you of the propriety of the present undertaking, or to induce you to give every assistance in your power, when I recollect that I address an old Officer, who has risen, so deservedly in the service of his country to so high and exalted a station.

I sail this evening for Rio de la Plata, and trust you will lose not a moment's time in sending the Georgiana to meet me at Monte Video, either with troops or intelligence, *as the smallest force would assist us materially.*

I have the honour to be, &c.

(Signed) HOME POPHAM.

Honourable R. Patton, Governor,  
in Council, &c.

*Inclosure (No. 2.) in XV.—Copy of a Letter from Mr. WAINE, the Master of an American Ship, to Sir HOME POPHAM, dated the 28th of March, 1806.*

(PROFOUND SECRET.)

SIR,  
Cape of Good Hope, March 28, 1806.  
I BEG leave to represent to you, that I have been three

times to Buenos Ayres and Monte Video; that both places have the greatest abundance of wheat, flour, and indeed every sort of provisions. From my knowledge of the minds and dispositions of the inhabitants, I can assure you that his Majesty's squadron, under your command, with a small military assistance, would, with ease, take possession of either of those places; and if permanent possession could be effected, there is not the smallest doubt of procuring any quantity of flour; and to prove to you that it is not an idle suggestion to mislead the British, I could have no objection to be one of five hundred men to attack either place. I am sure the inhabitants are so ridden by their Government, that to prevent a shot being fired at Monte Video, if they had any threat from the men of war, they would send out any quantity of flour or biscuit, to prevent mischief; but the places may be taken as I describe, and if the trade is thrown open, all the inhabitants would willingly acquire and keep the place for the British nation without troops, which would be a mine of wealth; I hope you will not make mention of my name improperly, as it may injure me greatly. I myself, with my ship Elizabeth, are at your service to do what you please to get possession of Buenos Ayres.

I am, &c.

(Signed) T. WAINE.

Commodore Sir Home Popham,  
&c. &c. &c.

No. XVI.—*Copy of a Letter from Sir HOME POPHAM, dated 30th April, 1806; with three Inclosures.*

SIR, Diadem, St. Helena, 30th April, 1806.

CONFORMABLY to the letter I had the honor of addressing you the 13th instant, I sailed from the Cape with the ships named in the margin,\* having on board the 71st Regiment, with a small detachment of Artillery, and a few dismounted Dragoons.

\* Diadem, Raisonable, Diomede, Narcissus, Encounter;  
—Walker, Triton, Melantho, Ocean, Willington transports.

On the 20th, at night, in very squally unsettled weather, attended with a high sea, the Ocean parted company, and as I thought it possible she might have rolled away her mainmast, and bore up for St. Helena, it was deemed advisable to bear up for that island, not only on account of the Ocean, but because it has been suggested as possible that the Governor might be able to spare a few hundred troops to strengthen the expedition, especially as it had been proposed, during the late war, to attempt a similar enterprise with the troops of the island only.

That no time might be lost after this decision was taken, I dispatched the Encounter to Captain Honeyman, who was cruising off the mouth of the river, to warn him of the probable arrival of the Ocean; and the Narcissus was sent to St. Helena with the Letter No. 1. to the Governor; although I have not yet received an official answer, yet he has ordered one hundred and fifty infantry, and one hundred artillery-men with two howitzers, to join the expedition; and as I trust they will be embarked either this morning or early to-morrow morning, I hope we shall be able to sail immediately in the execution of this service.

I am, &c. &c. &c.

HOME POPHAM.

Since writing the above, I have received the Governor's answer, No. 2, to which I have annexed my answer, No. 3, for their Lordships' information.

Inclosure (No. 1.) in XVI.—*Copy of a Letter from Sir HOME POPHAM to the Governor of St. Helena, dated April 23d, 1806.*

SIR,

Diadem, at sea, 23d April, 1806.

ON the day I sailed from the Cape, I requested Sir David Baird to give to the care of General Anker, the late Governor of Tranquebar, a dispatch for your Excellency, of which the inclosed is a duplicate.

The uncertainty, however, of General Anker's touching at St. Helena, accompanied with other circumstances, have induced me to bear up with the squadron, for the purpose of facilitating the execution of those measures which I have



requested you to adopt, in co-operation with Sir David Baird and myself, for the public good.

I have no doubt but your Excellency is aware that, during the last war, preparatory steps were taken at St. Helena for a similar attempt on the possessions of the enemy in Rio de la Plata, by the forces from your government; and though the various motives of policy which then existed for the execution of such an enterprise do not appear to me to be in any degree lessened, yet the manufacturing towns in England have, from the posture of affairs on the Continent, an additional claim to the energies of all Officers, who have the means of opening any new channel for the consumption of their goods.

Under these considerations, and the strong expressions of zeal conveyed in your *Letter of the 27th November, 1805*, founded, I presume, on ample authority from the Court of Directors, do I rest my confidence that you will give every military aid to this expedition that you possibly can, consistently with the safety of the island under your government.

I trust that, in a few hours after you receive this, I shall have the honour of presenting General Beresford to your acquaintance; and I have no doubt that when the object of this expedition is promulgated in the island, your greatest difficulty will be resisting the voluntary offers of the troops—for, however popular this enterprise may be in England for all its commercial relations, nothing could exceed the anxiety which was testified by every soldier at the Cape to be employed on it, when its destination was first made public.

I have, &c.

Hon. R. Patton, &c. &c. &c.

HOME POPHAM.

*Inclosure (No. 2.) in XVI.—Copy of a Letter from the Governor of St. Helena to Sir HOME POPHAM, dated 1st May 1806.*

To his Excellency Sir HOME POPHAM, K.M.

&c. &c. &c.

SIR,

IN consequence of your letters to me, dated the 13th and 23d April, applying for the co-operation of this government

in an expedition concerted and planned by Major-General Sir David Baird and your Excellency, holding the authority of Commander-in-Chief of his Majesty's Forces at the Cape of Good Hope, for an attack upon the Spanish settlements at Rio de la Plata, upon the information you had received of the defenceless state of Monte Video, Buenos Ayres, and their dependencies, the Governor and Council, placing confidence in the statement you have given of the facility with which this important measure may at present be carried, and in the view of forwarding the success of his Majesty's arms, have determined to co-operate with you and Brigadier General Beresford, by sparing from this garrison one hundred artillery men, with two howitzers, &c. and one hundred and fifty rank and file infantry, with their appropriate officers, under the command of Lieutenant-Colonel Lane, the Lieutenant-Governor of this Island, relying upon your representation, that the service upon which they are to be employed will be speedily accomplished, and with an express stipulation, which is required on your part and that of Brigadier-General Beresford, that the detachment of St. Helena troops, forming so material a part of this garrison, shall not be detained longer than after the capture of Monte Video and Buenos Ayres, when they are immediately to be sent back to this island. I have the honour to subscribe myself,

SIR,

Your most obedient, humble Servant,  
St. Helena, 1st May, 1806. ROBERT PATTON.

*Inclosure (No. 3.) in XVI.—Copy of a Letter from Sir HOME POPEHAM to the Governor of St. Helena, dated May 1st, 1806.*

SIR,

Diadem, St. Helena, 1st May, 1806.

I HAVE the honour to acknowledge the receipt of your letter of this day's date, replying to mine of the 13th and 23d ultimo, on the subject of a co-operation from your government, by such a force as you could reasonably spare, for the intended attack upon the enemy's possessions in the Rio de la Plata.

I made this application on the same principle that induced Lieutenant-General Sir David Baird and myself to undertake the enterprise in question, which was the intelligence we had received of the defenceless state of Monte Video and Buenos Ayres; and I return you my thanks for the assistance you have given, in sending a proportion of Infantry and Artillery under the command of Lieutenant-Colonel Lane.

As you require that General Beresford and myself should enter into a stipulation to send back the Company's troops when Buenos Ayres and Monte Video are captured, I have consulted the General on that subject, who very properly observes, that on the first moment of our success, it might be highly imprudent to detach any part of our force; but you may rest assured that the troops of the island shall not be detained one day after they can be spared from the service for which they are requested.

I have the honour to be, Sir,  
Your most obedient, humble Servant,  
HOME POPHAM.

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No. XVII.—*Copy of a Letter from Sir HOME POPHAM, dated July 19, 1806; with two Inclosures.*

SIR, Diadem, Rio de la Plata, July 19, 1806.

I HAVE the honour to enclose to you, for the information of the Lords Commissioners of the Admiralty, copies of the letters I wrote by the *Melantho* transport, which ship I dispatched to the Cape, with the account of our success at this place.

As I knew that General Beresford had pressed in the strongest manner on Sir David Baird the necessity of sending a reinforcement to this river, without a moment's loss of time, I took the liberty of writing two separate letters, in case there should be any officer senior to me, at the Cape of Good Hope: and I hope the tenor of both those letters will meet their Lordships' approbation.

I have the honour to be, &c. &c. &c.,  
(Signed) HOME POPHAM.

To William Marsden, Esq. &c. &c. &c.  
Admiralty.

Inclosure (No. 1.) in XVII.—*Copy of a Letter from Sir  
HOMER POPEHAM, dated July 5, 1806.*

SIR,

Buenos Ayres, July 5, 1806.

I HAVE the honour to enclose, for your information, a copy of the letter which I wrote to the Secretary of the Admiralty, on the subject of my intention to proceed to Rio de la Plata, where we arrived without any material occurrence, on the 10th of last month; though from the difficult and intricate navigation of the river it was not till the 26th that we got near Point Quelmes to land the troops; this position is three leagues from Buenos Ayres, which it was determined to attack first, as the capital of the country.

On the 28th we succeeded in obtaining possession by the able disposition of General Beresford and the gallantry of his troops.

We are now in a state of perfect tranquillity, and although we are in complete possession of Buenos Ayres, which is extremely quiet, yet we cannot move to further offensive operations, the principal of which would be Monte Video, without some reinforcements: I therefore hope, Sir, you will consider our situation—the advantageous conquest we have made for the good of the country—and of what importance the least reinforcement would be to us. A frigate, and one or two sloops of war, or armed vessels, would materially assist us, provided you cannot spare a greater force; and I do assure you, Sir, that a moment is of the greatest consequence in dispatching such, or whatever force you may be able to spare. From your present knowledge of our situation, I trust it will be unnecessary for me to urge any thing further on that subject.

As I have not yet had time to write my official letter to the Admiralty, I cannot send you a copy of it; but as General Beresford has written very fully to Sir David Baird, I am sure he will communicate to you any particular of which you may be desirous to be informed.

I, however, take the liberty of inclosing the letter I write, to any officer who may be junior to myself, as well as the di-

sections I have given to the principal Agent of Transport, the Naval Officer, and the Agent Victualler.

I have the honour to be  
&c. &c. &c.

(Signed) HOME POPHAM.

To the Commander-in-Chief, or Senior  
Officer of his Majesty's Ships and  
Vessels, at the Cape of Good Hope.

**Inclosure (No. 2.) in XVII.—Copy of a Letter from Sir  
HOME POPHAM ; dated July 5, 1806.**

SIR, Buenos Ayres, July 5, 1806.

HAVING considered it expedient to apply the energy of the squadron under my command, in conjunction with a detachment of Sir David Baird's army, under General Berresford, to an attack on the enemy's territories in Rio de la Plata, in which we have so far succeeded as to obtain complete possession of Buenos Ayres, and its dependencies, I think right to direct, *that you lose no time in dispatching all the naval force at the Cape to this place, except such part as Sir David Baird and yourself may think absolutely necessary to detain there, taking into consideration the capture of this place, and our present situation.*

*We cannot proceed to further offensive operations without a reinforcement: not from any idea of failing; on the contrary, we are certain of beating the enemy at Monte Video; we only want force to assist us in taking possession. As small craft is of the most material consequence, the sooner the Protector, Rollo or any other is sent, the better; and let each take a few casks of Irish provisions, particularly pork, for fear we should fail in our expectations of salting beef; but on this subject I have written particularly to the Agent Victualler.*

The best track to pursue in coming here, is to run directly into the heart of the trades, to make your westing; probably it may be necessary to go into 20. Keep in the trades till you are within 20 leagues of the coast, when you are almost certain of meeting northerly winds.

When you come into the river, the parallel of thirty-five ten is a good one to keep in till you get into twelve fathoms, when you should keep a few miles further to the southward, to avoid the English Bank ; though the probability is, that you will fall in with some of our cruisers before you get so high up.

I recommend, in the strongest manner, the most active exertions to dispatch any naval force to us, in our present anxiety to pursue our object of gaining Monte Video.

I have the honour to be,

&c. &c. &c.

(Signed) HOME POPHAM.

To the Captain or Commander of any  
of his Majesty's Ships and Vessels,  
junior to Sir Home Popham, at the  
Cape of Good Hope.

No. XVIII.—*Copy of a Letter from Sir GEORGE SHEE, Bart. to WILLIAM MARSDEN, Esq. dated Feb. 20th, 1807 ; with two Inclosures.*

SIR, Downing-Street, 20th Feb. 1807.

I HAVE Mr. Secretary Windham's directions to transmit, agreeably to your desire, copies of two letters from Major-General Sir David Baird to Lord Castlereagh, dated Cape of Good Hope, the 14th of April and 5th of May, 1806, stating his reasons for sending a force against Buenos Ayres, and giving an account of the arrival of a French frigate in Simon's Bay, and of her escape from thence on the 30th of April.

I am, Sir,

Your most obedient humble Servant,

William Marsden, Esq. &c.

GEORGE SHEE.

Inclosure (No. 1.) in No. XVIII.—*Copy of a Letter from Major-General Sir DAVID BAIRD, to Right Hon. Lord CASTLEREAGH, dated April 14th, 1806.*

MY LORD,

Cape-Town, 14th April, 1806.

THE intelligence lately obtained from a variety of sources of the present defenceless state of the Spanish settlements at Rio de la Plata, has led me upon very mature consideration

I inclose for your Lordship's information, a copy of the instructions I thought it necessary to give him, and I presume to hope they will meet with his Majesty's approbation.

In case of success, I consider it will be proper that General Beresford should take upon himself the office of Lieut. Governor; and have accordingly directed him to assume that situation, and to draw whatever salary and allowances may have been enjoyed by the Spanish governor, his immediate predecessor, until his Majesty shall be graciously pleased to make known his pleasure.

I have likewise conceived that in discharging his civil and military duties it would be right to invest him with a higher military rank than he is here known to possess; and having at the same time reason to think his Majesty has already been pleased to appoint him a Major-General in his army, I have been induced to desire he should assume that rank in South America only, upon landing there with the troops under his command.

As I can scarcely entertain a doubt of his success, I take the liberty of suggesting to your Lordship the expediency of his being immediately reinforced, if his Majesty shall decide to retain possession of the places which may surrender to him. Dragoons can be expeditiously and well mounted in South America, and I should think would be of infinite use in that country.

I also beg leave to submit the propriety of replacing, without delay, the force which has been detached from this colony with Brigadier-General Beresford.

The absence of that officer, and the return of Brigadier-General Ferguson to England for the recovery of his health, render it indispensable to send out one or more general officers to supply their places; and were I permitted on this occasion to express an opinion in favour of any individual, I should not hesitate to point out Sir Samuel Achmuty, as an officer qualified in every respect to fill the situation of the second in command in this colony.

I have the honour to forward, for your Lordship's information, a copy of the embarkation return of Brigadier-General's detachment, which sailed yesterday.



to detach a small force, with the view of attempting the possession of them, in conjunction with the squadron under the command of Sir Home Popham.

In forming this determination, I am perfectly aware that both the Commodore and myself have taken upon us a high responsibility ; but the great importance of the measure, in a national point of view, will I trust bear us out, and excuse us to his Majesty for undertaking a service which we have previously received his special and gracious commands.

The weak and defenceless state of the enemy could not have held forth to me a very strong temptation : but on a ground alone, I should not be justified in the step I have taken.

The possession of a settlement on the coast of South Africa, I consider pregnant with incalculable advantage, as to our nation at large, as to this colony in particular, and I need not point out to your lordship the peculiar benefit to be derived from its opening in our hands, a new and profitable channel for the exportation of our home manufactures, which it has been so much the study and wish of the present French government to obstruct and diminish.

The certainty that Admiral Willeaumez had prosecuted his voyage to India, and cannot for some months make an attempt to interrupt the tranquillity of this colony, coupled with the increasing strength and discipline of the Cape Government, was an additional argument with me for venturing to spare a part of the forces under my orders on a distant enterprise.

It is, I believe, the intention of Sir Home Popham, upon the successful termination of this undertaking, to return himself to England ; I therefore beg to refer your Lordship to him for a more circumstantial detail of the intelligent motives, and circumstances, which guided our resolution.

As I deemed it very essential on every account, that the command of the detachment should be intrusted to an officer of rank, and of tried ability, judgment, and zeal, I decided to select Brigadier-General Beresford, whom I know to possess those several qualifications in an eminent degree.



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General Anker, of his Danish Majesty's service, and late the governor of Tranquebar, undertakes to hand this dispatch to your Lordship. As he is perfectly the Englishman, I have had no hesitation in acquainting him with General Beresford's destination, and I take the liberty of recommending him as a most respectable gentleman to your Lordship's acquaintance and attention.

I have the honour to be, &c.

To the Right Hon. Viscount  
Castlereagh, &c.

DAVID BAIRD.

A True Copy,

(Signed) GEORGESHEE.

*Inclosure (No. 2.) in XVIII.—Copy of a Letter from Major-General Sir DAVID BAIRD, to Right Hon. Lord CASTLE-REAGH, dated May 5th, 1806.*

MY LORD,

Cape Town, 5th May, 1806.

I HAVE the honour to acquaint your Lordship, that the Cannonier French frigate, formerly his Majesty's ship *Minerva* stranded near Cherbourg at the commencement of the present war, being ignorant of our having possession of this colony, anchored in Simon's Bay on the 30th ult. and sent a Lieutenant on shore, who, with his boat and his crew, was captured by a party of the garrison disguised and stationed at the beach for that purpose.

As soon as this was done and the frigate had furled all her sails, Major Tucker, the senior officer at Simon's Town, directed the British colours to be hoisted, and the batteries to fire upon her with red-hot shot : unfortunately she had cautiously anchored at such a distance from the shore, that only one or two guns could bear upon her with effect. The fire, however, from these was sufficient to make her cut and put to sea again with the greatest precipitation, leaving two anchors and cables behind. Had she luckily approached a little nearer, there is reason to think, if she had not been set fire to, or compelled to strike, she would have sustained considerable damage, as the guns, howitzers, and mortars, I have lately mounted for the defence of Simon's

Town, could have opened, from various points, heavy and destructive fire upon her.

I learn from the Lieutenant and boat's crew, that the *Canonier* sailed from Cherbourg, on the 13th of November last, for the Isle of France, and from the latter place for this, with dispatches for General Jansens, a few weeks ago, leaving there the Piedmontese and Servillante French frigates. On her passage hither she fell in with a British convoy of 13 sail, and engaged the man of war in charge of it, whom she supposed to be a 74, for nearly two hours; and after having four men killed and twelve wounded, escaped, in consequence of having shot away her antagonist's mizen top-mast.

I am induced to think this frigate will proceed to Europe, and sincerely hope some one of our cruisers will be fortunate enough to intercept her. Neither during her passage out, nor from the Isle of France to this place, did she make any capture except a small Swede; and she is the same ship the *Raisnable*, Captain Rowley, chased and nearly captured about three months ago off Cape L'Aquillas.

I have further to inform your Lordship, that the brig *Fortuna*, under Mecklenburg colours, arrived in Table Bay a few days ago, bound to this place and Batavia. For the reasons contained in the statement I have the honour herewith to forward to your Lordship, I have felt it my duty to detain this vessel; and her cargo being principally of a perishable nature, I have ordered it to be landed and sold.

Copies of the *Fortuna's* papers are transmitted by this opportunity to his Majesty's Court of Admiralty for adjudication, together with a detailed account of all the circumstances relating to her, supported by the necessary affidavits. Should the vessel and cargo, or either, be condemned, I request your Lordship will humbly solicit his Majesty in my name to be graciously pleased to bestow them as a prize to his land troops now serving here, no vessel of war of any description being present, and a party from this garrison having boarded and taken possession of the *Fortuna* in very tempestuous weather at the hazard of their lives.

The dispatches brought by this vessel from the Batavian government are not of much importance. I should otherwise

deem it my duty to transmit copies of them to your Lordship : much was left to be communicated verbally by Mr. Dosi, who declines giving any information.

The only circumstance necessary to be reported, is an order to the governor in council here, to receive any French troops which may arrive in a distinguished manner, and to yield the command of the French and Batavian forces to the senior officer of the former, although of inferior rank. An inference may, I think, be fairly drawn from this circumstance, that the French meditated to send out a body of troops for the purpose of either taking possession of the Cape, or of forming a conjoint expedition against St. Helena or some of our Asiatic settlements.

I forward a duplicate of my last dispatch to your Lordship of the 14th ult. and have the honour to be, &c.

(Signed) D. BAIRD, Maj. Gen.

Right Hon. Lord Viscount  
Castlereagh.

A True Copy,

(Signed) GEORGE SHEE.

Upon reading the first inclosure in the last number,

Sir HOME POPHAM pointed out an omission, probably in the copying the letter, as it only mentioned " the Indies," whereas it should have been " the West Indies," to which the French fleet had prosecuted their voyage, according to the information he had received, and Sir D. Baird had his intelligence originally from him—therefore, there must have been a mistake in the insertion of the word " Indies," which he wished to have corrected, lest any improper impression should be produced by the statement as it now appeared. For if by the word Indies the East were to be understood, it would totally alter the fact and his meaning

also—as such a destination of the French squadron should have decided him not to stir from the Cape.

Mr. JARVIS was not prepared to speak to the omission pointed out by the Honourable Captain in this copy, as he had not the original dispatch by him. He was, however, not disinclined to admit that there might be such a mistake as that alluded to by the Honourable Captain. However, as he had not brought down the original, he could not state positively. This original, indeed, he did not think material, as he did not mean to offer the letters referred to as *evidence* against the Honourable Captain, although read in the *statement* of the charge.

Sir HOME POPHAM was aware that such letters were not admissible evidence against him; but yet he wished that any document laid before the Court should be correct; and in that case he had no objection whatever that any letter or paper at all relating to the subject of the charge before the Court, should be brought forward. Indeed, he could not but be anxious that every thing connected with this business should transpire—concealment was not his interest.

Mr. JARVIS, after observing that perhaps this conversation was irregular, again remarked, that as this paper was not adduced as evidence, any mistake in it could not be material. However, he should have no objection to accede to the Honourable Captain's wish.

Sir HOME POPHAM begged not to be understood as asking for any thing which he was not able to prove. But it would save time if the Learned Counsel would accede to the admission required.

After some further conversation, Mr. Jarvis admitted that Sir H. Popham represented his belief to Sir D. Baird that the French fleet had gone to the West Indies, which admission was entered accordingly.

The JUDGE ADVOCATE stated that the papers which he had read composed all that were referred to in the charge before the Court.

Mr. JARVIS asked, whether the Honourable Captain admitted the receipt of the original instructions of the 29th July, 1805?

Sir HOME POPHAM—"Certainly; and I admit every document referred to in the charge, which purports to have been written by me; also such as I received."

The instructions were read over again as evidence; but some of the documents, which immediately followed, being but copied, with some blanks, the Court adjourned for some time, until the originals were sent for ashore. When produced, they were read in evidence.

Sir HOME POPHAM stated, that he never received the Numbers 3, 4, and 5, until the other day on his return to England. He therefore could know nothing of the orders they contained. There was good reason indeed, that these dispatches never reached him, for the Belle Poule packet, which contained some, was, as he understood, captured by the enemy; and the Lyar, by which the other was sent, never touched at the Cape.

Mr. JARVIS admitted, that these dispatches did not form evidence to affect the Honourable Captain, as knowing their contents. He adduced them merely as evidence, that such orders were issued by the Admiralty under the belief that Sir H. Popham was at the Cape.

Sir HOME argued, that those letters could

not be read in evidence against him upon any ground whatever. He had never received them, nor known any thing of their contents until after his arrival in England ; and consequently, he could not conceive how they could be admitted as any kind of evidence whatsoever upon this trial. The Learned Counsel was certainly better qualified to argue a point of law in this case than he was, and upon that ground he laboured under a considerable disadvantage. It was his earnest desire that every species of fair testimony, to whatever extent, should be produced, on the present occasion ; but he must still protest against the reading of those documents as utterly irrelevant to the charge against him ; and he asked therefore, why bring them forward at all upon his trial ?

Mr. JARVIS. " To shew that the Board of Admiralty believed the Honourable Captain to be at the Cape to receive orders."

The PRESIDENT. " As there is no evidence of the receipt of these orders, of course no charge of disobedience can arise out of them."

Sir HOME POPHAM. " Then for what purpose are they laid before the Court, if they are not meant to affect me ? I really cannot conceive the object which the Learned Counsel has in view. I do not mean to argue a point of law with that Learned Counsel."

PRESIDENT. " He is not here, Sir, as Counsel—he appears here as Prosecutor, to which the Admiralty have thought proper to appoint him."

Sir H. POPHAM. " Then he officiates in a double capacity, as Counsel and as Prosecutor."

PRESIDENT. " We know him here only as a Prosecutor."

The JUDGE ADVOCATE asked, whether these letters should be admitted ?

PRESIDENT. " Let them be received, the Court will consider afterwards how far they bear upon the case before it."\*

After the letters, &c. admitted by the Prisoner, had been read in evidence—

Mr. JARVIS stated, that the case for the Prosecution was closed. The Learned Gentleman observed, that the Honourable Captain, in a letter, officially received from him yesterday, placed a good deal of emphasis upon what he called the introduction of new matter into the charge, which had been recently conveyed to him. But having seen the charge, a copy of which was transmitted to the Honourable Captain immediately after his arrival in England, he declared, that he saw no material difference between that and the former. He was sorry that in the former, the documents to be adduced in evidence were not specifically described, as the Honourable Captain professed to feel some inconvenience on account of that omission.

Sir HOME POPHAM observed, that the difference would be obvious to any man who reviewed the documents themselves. Indeed

\* It will be seen in the sequel of this trial that documents would not be allowed to be entered on the minutes, if they were not legally admissible evidence. It is indeed rather a new doctrine in any criminal court that evidence should be allowed to go to the Jury, which is *primâ facie* confessedly inapplicable against the accused, merely that they should consider afterwards " how far it might bear on the case." It may be said that there is a material difference between a jury and a court martial; but why lay a document before any court which ought to have no effect upon its judgment? According to the plain precepts of common sense and the natural order of things, we should imagine that the consideration as to the admissibility of evidence, ought rather to precede its admission than be left for subsequent deliberation.



there were some papers read to-day, which he had never before seen or heard of.

The President telling Sir Home Popham, that he was now at liberty to enter upon his defence, the Honourable Captain requested liberty to retire with his counsel for a few moments, which was granted. Upon his return to the Court—

Sir HOME said, he must confess that he could not feel himself comfortable if called upon to enter into his Defence before Monday. He should be happy to come forward to-morrow, if it were in his power, but he hoped the Court would feel it very natural that he should seek to be fully prepared, when they reflected that there were some letters advanced in evidence against him which he never heard of, until hastily read this day in Court; and that some proceedings had been taken by his prosecutors, of which he was not apprized until he came to Portsmouth.

PRESIDENT.—“ There are Officers here who have been called away from various stations, where they are engaged in the service of their country, therefore every degree of expedition is desirable. Perhaps, by to-morrow, you may be able to prepare your Defence; in that hope, we shall adjourn the Court until then; if not then ready, you will state when you can be so. I trust you will endeavour to come forward as soon as possible.”

Sir HOME POPHAM.—“ Really, Sir, I am anxious to come forward as soon as possible; but from the new matter that has appeared (three documents only having been referred to in the charge originally served upon him, while eighteen had been brought forward to-day) from the publicity which is likely to be given to this business, through the number of Reporters now present, I

hope this Honourable Court will feel that it is due to my character to leave no endeavour unre-mitted to meet every part of the accusation. I shall use my utmost exertion to comply with the wishes, and to abridge the trouble and attention of the Court: but I hope they will feel the propriety of my proposition for farther time to consider my case."

Admiral HOLLOWAY expressed a wish that the defence should be entered upon to-morrow, or if not that a satisfactory reason should be assigned for the propriety of farther delay.

Sir HOME POPHAM thought the new letters brought forward this day quite a sufficient reason for the delay he required. Besides, there were some letters for which he had applied to the Admiralty, and which he had not yet received.

Mr. JARVIS professed sorrow that the Hon. Captain should feel any reason to complain upon this occasion. Any letters he had it in his power to furnish should be at the service of the Honourable Captain. He held in his hand copies of all the documents referred to in the charge, and would immediately present them to the Honourable Captain or his agent.

These letters were accordingly received by Mr. Lavie.

After some farther conversation, the Court adjourned till 11 o'clock to-morrow—the President expressing a hope that the defence would be then ready; and the Hon. Captain stating his fears that it could not, although he would willingly stay up all night for the purpose, if that would enable him to comply with the wishes of the Court.

## SECOND DAY.

SATURDAY, MARCH 7.

The Court having assembled at 11 o'clock in the morning, pursuant to adjournment, and Sir Home Popham being summoned to attend the Court, by the officer in waiting, and having taken his place,

The PRESIDENT said—"Sir Home Popham, you were in doubt, yesterday, whether you would be prepared to go into your defence this day; the Court wish to be informed whether you are so prepared?"

Sir HOME POPHAM replied, that anxious as he must be to gratify the wish of the Court, and to bring this business to a conclusion, he was most sincerely unwilling to occasion any delay that could consistently be avoided. But from the alteration which appeared between the charge originally served upon him in London, and that which he had received from the Judge Advocate since his arrival at Portsmouth;—from the very severe animadversions upon his conduct, which had been made in the Senate; and the party animadversions still more severe which had appeared in some of the periodical publications; he felt it essentially necessary to his character to enter at large into all the facts which he had it in his power to advance in his defence. He therefore found it impossible to come prepared at that moment, the more especially as it was, among other circumstances, his misfortune recently to have met with a very serious domestic affliction arising out of the animadversions he had alluded to. For these reasons, which he hoped the Court would feel sufficient to enervate and disarrange

any man's mind, he regretted to say that he was quite unable to comply with the wishes of the Court, by entering into his defence at present.

PRESIDENT. "We wish to give you every opportunity of preparation for your defence; but from the number of Officers who are consequently detained here from executing very important duties in the service of their country, we do expect you will enter on your defence, as soon as you can, consistently with justice."

Sir Home Popham—"Mr. President, I beg leave to state to you and the Hon. Members of this Court, that I have used my utmost endeavours, since the adjournment yesterday, to prepare my defence, in order to have laid it before you this day; but from the variety of new documents and papers most unexpectedly introduced into the charge, and to meet which I was not entirely prepared, I have found it impracticable, with all my exertions to complete my defence, as I anxiously wished to do. I am therefore under the necessity of craving the indulgence of the Court, until nine o'clock on Monday morning. I can assure the court, that what I am obliged to solicit, entirely arises out of the additional matter introduced into the charge, adduced yesterday, beyond that which I received in London. I beg leave to put the latter into the hands of the Judge Advocate, with his letter to me, inclosing the charge on which I am now tried. I have also to request the Court will be pleased to call for a letter I addressed to Mr. Marsden, a copy of which I have now in my hand. When these are read, I trust the Court will not suppose this trifling delay attributable to me. In order to save the time of the Court

on Monday, I beg leave to suggest the reading now of several papers and letters, which will form part of my defence. My legal adviser has applied to Mr. Greetham for copies of the Order of the Admiralty read yesterday, appointing Mr. Jarvis and Mr. Bicknell to conduct the prosecution; but, as the Judge Advocate wished the authority of the Court for giving them, I now presume to ask it "

He then requested that his letter of the 30th April, from St. Helena, should be read; also *The Gazette* of the 27th January, containing his supposed letter upon the recapture of Buenos Ayres, and to contrast it with the actual letter. Also a letter to the Governor of Monte Video, &c. &c.

The substance of these observations was afterwards delivered in a written paper to the Court, and subscribed by Sir Home.

The charge alluded to, was then read, it did not contain the extract of the papers for the support of the charge, which we have already set forth in the proceedings of the first day. It appeared to have been delivered to Sir Home Popham in London, on the 18th February last.\*

*\* Copy of the Order intended to be given.*

By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

WHEREAS by our order, dated 29th July, 1805, Sir Home Popham, then Captain of his Majesty's ship *Diadem*, was directed to take under his command his Majesty's ships *Belliqueux*, *Raisnable*, *Diomedé*, *Narcissus*, and *Leda*, the *Espoir* sloop, and *Encounter* gun-brig, for the purpose of capturing the enemy's settlements at the Cape of Good Hope, in conjunction with the troops under the command of Major-General Sir David Baird; which settlements were surrendered to the ships and troops afore-mentioned, in the month of January, 1806: And whereas it appears by letters

The Letter from Mr. Greetham and Sir Home Popham, to Mr. Marsden, above alluded to, and two other Letters, were then read, nearly as follows :

*Letter from Mr. Marsden to Mr. Bicknell.*

SIR, Admiralty-Office, March 2, 1807.  
My Lords Commissioners of the Admiralty having direct-

from the said Sir Home Popham, to our Secretary, dated the 13th and 30th of April following, that, with the view to attack the Spanish Settlements in the Rio de la Plata, for which attack he had no direction or authority whatever, he did withdraw from the Cape the whole of the naval force which had been placed under his command for the sole purpose of protecting it, thereby leaving the place which it was his duty to guard, not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects, or of taking possession of any ships of the enemy which might have put into any of the bays or harbours of the Cape, or parts adjacent; all which he the said Sir Home Popham did, notwithstanding he had received previous information of detachments of the enemy's ships being at sea, and in the neighbourhood of the Cape, and notwithstanding he had been apprized that a French squadron was expected at the Mauritius, of which he informed us by his letter to our Secretary, dated the 9th of April, 1806. only four days prior to his departure from the Cape for the Rio de la Plata.

And whereas it appears to us, that a due regard to the good of his Majesty's service imperiously demands, that so flagrant a breach of public duty should not pass unpunished: And whereas, by our order, dated the 28th of July, 1806, Rear-Admiral Stirling was directed to send the said Sir Home Popham to England, which he has done accordingly: And whereas Sir Home Popham was, on his arrival, put under an arrest, by our order, and is now at Portsmouth awaiting his trial; We send, herewith, the necessary papers for the support of the charge, and do hereby require and direct you forthwith to assemble a Court-Martial: which Court (you being the president thereof) is hereby required and directed to enquire into the conduct of, and to try the said Captain Sir Home Popham for the offences with which he is charged accordingly.

Given under our hands, &c.

ed Mr. Jarvis, Counsel for the Affairs of the Admiralty and Navy, to conduct the Prosecution, on the part of the Crown, at the Court Martial, to be held at Portsmouth, the 5th instant, for the trial of Captain Sir Home Popham, I have their Lordship's commands, to signify their direction to you, to attend the said Trial, and give Mr. Jarvis such assistance as he may require on the occasion.

(Signed)

WM. MARSDEN.

*Letter from the same to Thomas Jarvis, Esq.*

SIR,

Admiralty-Office, March 2, 1807.

My Lords Commissioners of the Admiralty having ordered that a Court Martial shall be assembled at Portsmouth, on the 5th instant, for the trial of Captain Sir Home Popham, for the offences set forth in the said order, and their Lordships deeming it expedient that you should attend upon this occasion, to conduct the prosecution on the part of the Crown, I have received their Lordship's commands, to signify their direction to you, to attend the Court Martial, and conduct the prosecution accordingly.

(Signed)

WM. MARSDEN.

SIR,

Portsmouth, March 4, 1807.

I beg leave to inclose to you a copy of the order of the Lords Commissioners of the Admiralty, addressed to Admiral Young, to assemble a Court Martial to inquire into your conduct, and to try you for the offences charged therein: I shall be obliged to you to favour me with a list of the witnesses necessary to your defence, and to inform me when you shall be ready to meet your trial. I have, &c.

(Signed)

M. GREETHAM.

To Sir Home Popham, &c. &c.

Sir,

Portsmouth, March 4, 1807.

I received on my arrival here this morning, a letter, of which the following is an exact copy [Here follows a Copy of the foregoing letter.]

The order which accompanied this letter, dated the 2d inst. to my great surprize, contained a great variety of new matter to which my attention had not been before drawn, not being included in the Copy of the Order originally furnished me. The introduction of these papers at this late season, is the more extraordinary, as by my letter of the 23d ult. I had, with a view to guard against such a circumstance, expressly asked of you, whether any further documents besides those noted in the attested charge, were to be read in evidence in support of it. By the extraordinary delay also in forwarding the order here, no summons for my Witnesses could be obtained from the Judge Advocate until this day, although I particularly called your attention to this subject, in my letter of the 25th ult. Under these circumstances I have been obliged to write to Mr. Greetham, as follows :

‘ I have in answer to inform you that it will be impossible for me, under the circumstances of this late communication, to say whether it will be practicable for me to be ready to-morrow, until the arrival of my legal adviser, whom I expect late this evening, when I will give you the earliest answer possible.’

As I find it absolutely necessary for my defence, to have your personal attendance at the Court Martial, I have desired the Judge Advocate to summon you accordingly.

I have also to request you will produce thereupon the charge and sentence, or the whole of the trial of Captain Edward Thompson, of the Hyena, with whom I was a Midshipman three years. This took place in March, 1782.



Having been very much engaged, immediately prior to my quitting town, I neglected acknowledging the receipt of your two Letters, of the 28th ult. with their several inclosures. This I now do. I have, &c.

(Signed)

HOME POPHAM.

To William Marsden, Esq. &c. &c.

The PRESIDENT—"Are the other letters which you now wish to read, absolutely necessary for your defence?"

Sir HOME POPHAM—"They refer to many statements in my defence, and it will be necessary to read them."

Mr. JARVIS observed that the charge before the Court was word for word the same as that which he had seen before the Honourable Captain came to England, and which was presented to him, he understood, immediately upon his arrival. The Learned Gentleman then entered into some legal objections to the right of the Honourable Captain to demand papers or evidence from his prosecutors. He did not mean to press this objection, but yet he wished it to be understood, that he felt it to be perfectly tenable. A practice did prevail in other Courts with regard to furnishing prisoners with a list of witnesses against them in particular cases, which practice did not at all obtain in Courts Martial.

The JUDGE ADVOCATE observed, that the letter from him to the Honourable Captain, was only meant to apprise the Honourable Captain of the intended trial, in order that he might be fully prepared.

Sir HOME POPHAM—"But I only received that note of preparation on Wednesday last. I approach this Honourable Court with great

deference, and I offer my sentiments with extreme diffidence ; but I must deprecate the Learned Gentleman's perseverance in his legal discussions. I am surprised that the Learned Prosecutor should take advantage of the absence of my legal friend and adviser (Mr. Harrison,) to engage in discussions of this nature. Although I am aware that I am under the protection of a more paramount Counsel, the President of this Honourable Court, I cannot help remarking, that it would have been more liberal in the Prosecutor to have suspended, under the circumstances I have mentioned, his animadversions upon the law of evidence. I am upon good authority justified in believing, that instances have occurred, in which such requisitions as I have made for papers, and as the Learned Gentleman deprecates, have been immediately complied with. But even supposing no precedent had existed, would it be derogatory to the dignity of the Admiralty to introduce a liberal precedent in my favour ; as it has thought proper to establish a precedent so new as that of sending down the Learned Gentleman, as the Prosecutor against me—as it has thought proper to appoint one, who independently of the advantages derived from his consultations with that Honourable Board in London, is enabled to avail himself of the information he had the opportunity of obtaining from the ingenuity and profound knowledge of the Counsel to the Admiralty, with whom no one is more intimate than the Learned Prosecutor?\*

But my incapacity to contend with the Learned Gentleman, particularly upon questions of legal difficulty, will be still more evident to

\* This produced a general smile in the Court.

this Honourable Court, when I state, that even here he has it in his power occasionally to resort to the opinion of the Counsel for the Admiralty—to the advice of one who has never before been heard of in a Court Martial, although on this occasion his profound judgment and elevated talents can be referred to by the Prosecutor, while this Learned Counsel is, by the use of a sort of invisible ring, concealed from the light and from the *avowed* knowledge of this Court.

The PRESIDENT, addressing himself to Sir Home Popham—"You will give in to the court, Sir, the list of the papers you wish to have read, or state the nature of them, just as you may think proper,"

Sir HOME gave in the list required, and after the Court had consulted for a few moments with Mr. Jarvis, all strangers were ordered to be excluded. The Court was cleared for about an hour, and upon our re-admission, the Judge Advocate read the following decision, addressing himself to Sir H. Popham :

"The Court having taken into consideration your application to be allowed until nine o'clock on Monday morning to prepare your defence, have consented to your request ; but as the principal reason you have given for asking for more time, is the introduction of a great variety of new matter into the charge, the Court think it necessary to observe, that between the copies of the intended charge as sent by the Secretary of the Admiralty, and that delivered to you by the Judge Advocate, there is no *material*\* dif-

\* Now the difference being this, that in the one case only three documents, namely, those of the 9th, 13th, and 30th of April, were referred to, whereas in the other no less than eighteen were brought forward, it will be for the world to determine whether that difference was *material*. As nothing can be more material for any person accused to know, previous to

affecting the dignity and independence of the Trial by Court Martial, upon which the honour and protection of the service so much depend; and because, as far as I am personally concerned, the anxiety which I feel to enter on my defence, and vindicate my character from the imputations which are cast upon it, would not allow me (if I had the opportunity) to avail myself of any objection to the form or mode of proceeding. To the subsequent part of the charge, detailing and commenting on the documents which are referred to in support of it, I also wish to call the attention of the Court; as I am confident it will appear that many of the comments are not justified by the documents. The Court will have perceived that many of the letters and details are no evidence against me, and that many which were read as part of the charge, were not attempted at all to be proved. The production of those documents, or rather the mere reading of them, as part of the charge, makes it necessary that I should comment on them and their supposed effect; and I sincerely lament that this necessity compelled me most unwillingly to ask the indulgence of the Court until this morning.

I am not disposed, Sir, to complain of those who have directed this investigation, for having brought me before you. For I am aware that prejudices have been excited against me, which I can in no way so effectually encounter or repel as by this public inquiry, and the favourable result which I anticipate. I will not impute to any persons in authority, because I am unwilling to believe it possible that any orders could have authorized the unusual treatment and indignities to which I was subjected, in the manner in which I was superseded in my command, and in the way in which I was obliged

to come home; yet I cannot but think, Sir, that I have some little right to complain of not having received any intimation, before I left the Rio de la Plata, of the probability or even possibility of my conduct being submitted to this investigation. The silence of the Board of Admiralty in this respect has deprived me of some material witnesses, and accident alone has furnished me with those whom, on a subject in which my character and feelings are most deeply interested, I have to adduce. I cannot but suspect that the conduct of the Board of Admiralty must have originated in some change of opinion. All the information, and every fact, on which the judgment of the Board, as to my conduct, was to be formed, had long been before them. The re-capture of Buenos Ayres could not have produced, on high and honourable minds, any such change of opinion. But that some change did take place, from causes I am unable to develop, is obvious from the following official letter of the Secretary of the Admiralty:—

“ SIR, Admiralty-Office, 25th September, 1806.

“ I received, on the 12th instant, by Capt. Donelly, and lost no time in laying before my Lords Commissioners of the Admiralty, your letter of the 6th of July, acquainting me, for their Lordships’ information, that the city of Buenos Ayres, and its dependencies, had surrendered to his Majesty’s arms, after a slight resistance to the advance of his Majesty’s troops under the command of Brigadier-General Beresford, and detailing the operations conducive to this object on the part of his Majesty’s naval forces under your direction.—In answer thereto, I have their Lordships’ commands to acquaint you, that, although they have judged it necessary to mark their disapprobation of a measure of such importance being undertaken without the sanction of his Majesty’s Government, and of your having left the station which it was your duty to

guard without any naval defence; they are nevertheless pleased to express their entire approbation of the judicious, able, and spirited conduct manifested by yourself, the officers, seamen, and marines employed under your orders on the above occasion, and which you (or the senior officer on the spots) will communicate to them in a proper manner accordingly.

I am, &c. &c.

(Signed) WM. MARSDEN."

" Commodore Sir Home Popham,  
&c. &c. &c."

Disappointed as I naturally felt at finding that the direction of the force under my command met with disapprobation, instead of approval, I was in some measure consoled by their Lordships' commendations upon the manner in which the expedition had been conducted. Punished, as I must have been considered, by their expression of disapprobation, and still further by being superseded and recalled, I could not suppose that their Lordships meant to bring me to this trial. But I will not occupy the time or attention of this Honourable Court in tracing the causes that may have led to it, although they might not be considered as wholly irrelevant to the consideration of the charge; nor will I enter into any circumstances connected with former inquiries, as much of a political as of a personal nature, before another high tribunal, however gratifying it may be to me to reflect on the ultimate result; because those circumstances are well known to every Member of this Honourable Court, and because, whatever may have been their influence on the subsequent events of my life, they are not here fit subjects for discussion.\*

\* See Note A. in the Appendix for the Report of the Committee of the House of Commons, appointed to investigate

In looking round this Honourable Court, in which I see the highest ornaments of my profession, I am well satisfied that no party or political feelings will operate to my prejudice; and I should not deem it respectful to such a Court collectively, or to the High and Honourable Members of it individually, to attempt, by any comments on the effect of political prejudices and party spirit, to produce any undue impression in my favour. I wish to be tried, and to stand or fall in the opinion of this Court, of my profession, and of my country—by my conduct as an officer; and it is in the firm conviction that I shall be so tried and so judged that I present myself before you with confidence as to the result. The nature of my case, Sir, and the extraordinary circumstances connected with it, will unavoidably compel me to make some observations which may appear to be strong, both in their effect and application. I have ever been alive to the respect which is due to rank and station, and no man is more sensible than I am of the deference to which all legal powers and superior authorities are entitled: it is therefore my wish and determination to regulate my defence by those feelings; and I entreat the Court therefore to believe, that every observation which may appear to have a contrary tendency is drawn from me by a painful necessity imposed by the charges exhibited against me. But I will not detain you longer by general observations. The very peculiar situation in which I am placed will, I hope, justify me to you, Sir, and the Honourable Members of the Court, in making these preliminary remarks. I will now proceed

the charges brought by Mr. Kinnaird against Sir Home Popham, in the Sessions of 1805.

to comment upon the charge, the foundation on which it rests, and the reasons which induce me to rely upon the justice of this Court for my honourable acquittal.

I will first consider the nature of the charge generally, which is, that having been intrusted with a force for the capture of the Cape, and that having succeeded in that object, I did, with a view to an attack on the Spanish settlements in the Rio de la Plata, for which, it is said, I had no direction or authority whatever, withdraw the whole of the naval force from the Cape, under circumstances stated in the charge, which I will hereafter consider.

That I had no positive directions or express authority for such a destination of the force under my command I readily admit; for my instructions, which have been read to the Court as part of the charge, contain no direction whatever, in relation to my conduct after the capture of the Cape.—It cannot be contended therefore, nor is it contended, or stated in the charge, that I acted CONTRARY to orders. What then is the fair construction of the letter and tenor of my orders? What were the objects, which it was my duty as a naval officer to keep in view?—I admit to the fullest extent, that my first object was to be satisfied, that the captured settlement was in a perfect state of security from attack; the next, it will not, for it cannot be denied to me, was the disposal of the force under my command for the good of his Majesty's service, and the further annoyance of the enemy within the limits of my command.

The first principle of naval and military service is obedience to the orders of the government, directing the naval and military operations of the country, on a general view of their different bearings and effects. For it is to the



superintending power only that all the relations of the warlike operations of a state to each other can be known : but though this ever has been and ever must be the first principle of naval and military service, numerous instances have occurred, in which commanding officers of all ranks, from those who have held the most distinguished situations down to the commanders of the smallest vessels, have not only exercised discretion without orders, but even deviated from, and in many instances acted against, express orders for the good, as they conceived, of the service; for which, so far from having been charged with misconduct, they have met with approbation; or when tried by a court martial have been honourably acquitted.

Unfortunate, indeed, would it be for the naval profession, and still more unfortunate for the country, if such instances had not occurred, and had not been so considered. Some of the most important acquisitions of our country, some of the most distinguished exploits, some of the most judicious and spirited measures that have given celebrity to our profession, and marked the talents of those to whom we look as its brightest examples, owe their origin to such an exercise of discretion.

To the Members composing this Honourable Court, the majority of whom have already filled, and all of whom are likely to fill, high commands on distant stations, it is scarcely necessary to point out the combination and the variety of unexpected circumstances which may occur, and imperiously dictate the necessity of advantage being taken of the moment, in promptly acting against an enemy. Circumstances may be such that delay may lead only to discomfiture or disgrace; and that no time could be spared for consulting the superior authorities at home, or waiting for their orders.

Had such extreme caution, such rigid regulations, as seem to produce the present accusation, been hitherto enforced, that daring spirit of enterprise, that prompt and decisive energy of action, which have raised the British name and character to such a proud and enviable summit of distinction, would not only have been checked, but in a great measure annihilated; and the annals of our history would not have been graced by so many gallant achievements, which, though undertaken without orders, have in general been eminently conducive to the interest and glory of this country.

Numerous precedents exist which fully illustrate the truth of this position; some of them may probably occur to the recollection of the Members of this Court. Amongst others which present themselves to my memory at this moment, I shall beg leave to mention the *coup de main* which put the British crown in the possession of Gibraltar. Admiral Sir George Rooke had no orders for undertaking that bold enterprise, nor was he arraigned, although not publicly thanked, by his superiors at home for having exercised his discretion on that occasion. On the contrary, her Majesty Queen Anne did every honour to his spirited conduct.

In the American war, Admiral Sir Peter Parker and General Sir John Dalling, the then naval and military commanders at Jamaica, concerted an expedition against the Spanish settlement of Omoah, which was to a certain degree successful. No blame was understood to have attached to either of those officers for having directed this operation without orders.

At the beginning of the late war, in 1793, Lord Hood entered Toulon, and afterwards in conjunction with the land forces attacked the island of Corsica (as I understand) without special orders, where after St. Fiorenzo was subdued, and

As secure anchorage gained, he proceeded to Bastia, which surrendered to the fleet without the co-operation of the General his or troops.—That Admiral apologises in his public letter for having undertaken these operations, and Toulon and Corsica were ultimately evacuated, in consequence of our military force being inadequate to their preservation; and yet, neither this exercise of discretion in the first instance, nor the subsequent misfortunes which lost those places to the British arms, were ever made the subject of imputation or censure on Lord Hood as an officer, or of any criminal charge against him; but on the contrary, his conduct met with the most unqualified approbation of Government and his Sovereign, and the highest honour and rewards.

In 1796, Lord St. Vincent (then Sir J. Jervis) sent the heroic Nelson to attack Teneriffe, in consequence of information which he received, that two ships from the Rio de la Plata had landed their treasure there. Every person is acquainted with the issue of that expedition, which lost to the country so many brave men, and in which Lord Nelson himself was severely wounded. Notwithstanding the disastrous result of this attack, which was undertaken without orders from any superior authority, and I believe I am warranted in saying, out of the limits of Lord St. Vincent's command, no censure was ever understood to have passed on the conduct of that officer in directing it: certainly no judicial inquiry or public censure ever followed the enterprise.

Another instance of the exercise of discretion, I think it necessary to observe, is afforded to me by the treaty of El Arisch, entered into by Captain Sir Sidney Smith with General Kleber, for the return of the French army, under the command of the latter, from Egypt to France.

This treaty, as is well known, involving as it did great political interests, was not approved of by the British Government; and though it had been regularly signed and exchanged by Sir S. Smith, orders were sent out to Lord Keith to put an end to the treaty, and to prevent its being carried into execution. Although Sir S. Smith had the mortification of finding his well-meant exertions disapproved of, and cancelled at home; although they were the source of much embarrassment and uneasiness to the Government at the time; and above all, although he had no separate command, but was immediately under Lord Keith, then commander in chief in the Mediterranean, to whom the means and opportunity of reference, as compared with the present case, were short and easy:—yet the conduct of Sir Sidney Smith in this instance was never submitted to a Court Martial.

That illustrious character, Lord Nelson, has afforded to the navy another strong example of the exercise of discretionary power, by leaving his station in the Mediterranean to go to the West Indies, under circumstances which I cannot so forcibly state, as by quoting his own words, in a letter from him, since published, to Mr. Simon Taylor, of Jamaica, dated Victory, off Martinico, June 10, 1805.\* “I had no hesitation in forming my judgment, and I flew to the West Indies without any orders, but I think the ministry cannot be displeased.” Leaving his station, however, it must be recollected (if that judgment had been erroneous) without a single ship, and leaving also many vulnerable points unprotected. It is unnecessary to state, that general and public approbation followed this bold and judicious exercise of discretion.

\* See this letter in Cobbett's Register of February last.

Captain E. Thompson of the *Hyæna*, with whom I served three years as midshipman, exercised his own discretion, in coming to England from the West Indies with a convoy, without any orders for that purpose. He was tried in consequence of a letter written by Sir Samuel Hood, to the then Secretary to the Admiralty, in which that Admiral stated, that nothing which Captain Thompson had written, could induce him (Sir S. Hood) to approve of his (Captain Thompson) going to England without orders. Sir Samuel, in his letter, expressed himself in these words :—" I say, without orders, as he had none from me ;" and concluded his letter of complaint to the Admiralty thus : " It is my duty to state facts as they are represented to me, and it remains for their Lordships to decide upon the propriety, or impropriety, of a Captain's going such lengths *without orders*." Nothing is more evident, or can be much more strongly expressed, than the impression of misconduct on the part of Captain Thompson, which predominated in Sir Samuel Hood's mind, at the moment when he wrote the preceding letter of complaint ; yet the Admiralty Board of that day, notwithstanding the unfavourable impression certainly intended to be conveyed against Captain Thompson by Sir Samuel Hood, did not, as in my case, pre-judge Captain Thompson to the court, and term his conduct, "*a flagrant breach of duty that should not pass unpunished*," but simply directed the Court to inquire into the case, and try the said Captain Thompson for having left Barbadoes and come to England without orders.

Captain Thompson was tried for his supposed offence ; his conduct was declared by the Court to have been necessary, judicious, and highly meritorious, and he was honourably acquitted.

It is sufficient for me to have shown that cases must occur in which the exercise of such a discretion, in a commander, even to an extent far beyond what can, under the most severe and forced construction of my orders, be imputed to me, is not only justifiable, but oftentimes even highly meritorious. Numerous other instances might be adduced with which I will not trouble the Court. I will, however, refer to one which particularly applies to the subject of the present inquiry. The Court will have observed that in my letters and correspondence with the Governor of St. Helena, I allude to a former intention of making an attack on the settlements in the Rio de la Plata from St. Helena.

I am able to prove, that such an expedition was discussed and considered by Lord Macartney and Admiral Christian, on the suggestion of Governor Brooke, of St. Helena, and that without any orders. The objection of having no orders did not occur to either of them, the object being to annoy the enemy within the limits of Admiral Christian's command.

Before I quit this part of the subject I must observe, that it is impossible to confine that wise and salutary discretion, which must in all cases be left to commanders on distant foreign stations, within any precise and definite limits. The conduct of an officer, so circumstanced, must be tried by the actual situation in which he was placed at the time; not by subsequent events, or by facts which could not be known to or suspected by him, much less by any change of opinion arising out of a personal change in the superior authorities. The knowledge of prior circumstances—of the wishes of the Government under which he received his orders, and supposed himself to be acting, as to any such enterprise; and the motives which these circum-

stances point out, as naturally leading him to such an exercise of discretion, must be adverted to. It must be obvious, that an officer commanding on a distant foreign station, finding a force at his disposal, not wanted for any immediate object within the letter of his orders; and wishing for the honour of his country, and the approbation of those by whom he has been intrusted with command, to use that force most advantageously for his country, must be governed in his choice of the object and the extent to which he believes he may venture on such a disposal of his force, without orders, or even, in some instances, in deviation from his orders, by his knowledge of the sentiments of the Government.

If an officer has attained the highest rank in his profession, or has for years held high commands; if he has obtained, by his services, the highest honours and most distinguished rewards; if he has been employed on eminent stations, politically connected with his profession, and been accustomed, in such situations, to direct and command others; and has, from any of these causes, stood high in the confidence of Government and his country;—or if in an inferior rank, and without any of these claims to attention, he has had, like myself, the good fortune to have been employed on important and confidential services, and to have obtained the approbation of his employers; he will be naturally led to believe that an exercise of discretion, directly tending to forward the views of the Government under which he supposes himself to be acting, and that in a most favourite object of pursuit, which had been in contemplation for years, would not expose him to censure: but that on the contrary, it would receive the same appro-

bation which had hitherto followed all his efforts in the public service.

It is not necessary for me to call to the recollection of this Court, the various situations in which I have been professionally employed in almost every country. In alluding, therefore, to my employment in Flanders, Holland, Russia, and in the Red Sea, and the discretion which was vested in me, particularly for procuring and bringing the Russian troops to Holland, I entreat that the Court will do me the justice to believe that I do so most reluctantly, and not for the purpose of claiming merit, but of availing myself of the argument I have above submitted to the Court, to the extent which my humble rank and limited services may warrant.

Having given a general view of the subject, in order to direct the attention of the Court to the statement which I must enter into, and to enable them more readily to apply the facts, I shall proceed to the circumstances which preceded and gave rise to the expeditions to the Cape and Buenos Ayres ; and I must for that purpose go back to the period when I was first desired to collect the information necessary for planning the latter.

It was in the end of the year 1803, that I first had conferences with some of the members of the Administration then in power, relative to an expedition to the Rio de la Plata, and which was combined with one proposed by General Miranda. I had also frequent communications with General Miranda on the subject ; and, in fact, towards the close of that Administration, some steps were taken for carrying this projected expedition into effect. In the course of the following year, a change occurred in the Government of the Country, after which I was



appointed to command the blockading squadron off Boulogne, in the absence of Admiral Louis. During this period Lord Melville, then First Lord of the Admiralty, corresponded with me on the subject of Miranda's plan; and on my coming to town in the month of October, in that year, (at which period the probability of a Spanish war had increased) his Lordship directed me to send again for General Miranda, and to digest my ideas on the subject of an expedition against the Spanish settlements in South America, into the form of a memoir. To the best of my recollection I delivered this document to Lord Melville on the 16th of October, 1804. Shortly afterwards I was directed to attend Mr. Pitt, in order that he might converse with me on the various points comprehended in that memoir.

In the month of December, 1804, the *Diadem*, to which ship I was appointed, was put into commission for the express purpose of my proceeding in her on the intended expedition to South America; but various circumstances arose to retard the execution of the project at that time. These facts, as far as Lord Melville was concerned, his Lordship will, I am confident, substantiate by his own deposition.

In July 1805, when I was at Portsmouth, anxiously waiting the final arrangement about South America, I received, by private channels of communication, an account of the weak state of the garrison at the Cape of Good Hope. This intelligence appeared to me so important, not only from the advantage to be derived from the capture of the Cape of Good Hope itself, but from the facility which the possession of that settlement would afford to the projected conquest of the settlements on the east coast of South America, that I lost no time in coming up to town and communicating it to Mr. Pitt.

This communication was made through Mr. Sturges Bourne, then one of the Secretaries of the Treasury, whom I shall call as a witness before you.

I can take upon me confidently to say that it will appear, from the evidence of this gentleman, that the idea of an expedition to the Cape was adopted by Mr. Pitt, on my suggestion : and in the course of a few days I received my instructions to proceed in the *Diadem*, as commanding officer of all his Majesty's ships and vessels destined for that service.

On the 29th of July, 1805, I took leave of Mr. Pitt, when I had a long conversation with him on the original project of the expedition to South America ; in the course of which Mr. Pitt informed me, that from the then state of Europe, and the confederacy in part formed, and forming against France, there was a great anxiety to endeavour, by friendly negociation, to detach Spain from her connection with that power ; and that, until the result of such an attempt should be known, it was desirable to suspend all hostile operations in South America ; but that in case of failure in this object, it was his intention again to enter on the original project. From these circumstances it will, I am persuaded, appear manifest to every Member of this Honourable Court, that if the attack on the Cape of Good Hope preceded that of the Spanish settlements, the priority was the result of my own immediate suggestion to the late prime minister. Unhappily for me, death has deprived me of the means of proving the particulars of what passed in my last interview with that illustrious and ever to be lamented statesman. But I can prove, by the strongest presumptive evidence, that one of the last orders to me from Mr. Pitt, was to furnish Mr. Huskisson with

a memorandum of the names of the gentlemen from whom he was likely to obtain any further information he might want on the subject. Our conversation took place in Mr. Huskisson's room in the Treasury. As Mr. Pitt was going out Mr. Huskisson came in, and to him I immediately communicated Mr. Pitt's directions to me, and furnished him with the names. Mr. Huskisson can prove, from subsequent conversation with Mr. Pitt, that the names were so given to him by Mr. Pitt's order. Had Mr. Pitt been still living, I should not have been driven to resort to presumptive proof. I may, however, observe, that such proof is often as strong, and in all cases, by the laws of this country, even on trials for murder, is considered as conclusive.

I request, therefore, the Members of this Hon. Court to consider all the circumstances positively proved—the plan delivered in—the expedition set on foot to carry it into execution—the delay of that expedition—the substitution, by my suggestion, of that to the Cape—what will be proved by Mr. Huskisson, as to the last order I received relating to this project; and ask themselves whether it be possible to entertain a reasonable doubt, independently of my assertion, of my having been in complete possession of Mr. Pitt's views towards this expedition. In corroboration of what I have before stated, Mr. Huskisson can prove that active steps were taken to continue the search after further information respecting the Spanish settlements on the east coast of South America. The precise nature of these steps (as I do not feel at liberty, even in my own defence, to make disclosures which might hereafter hazard the personal safety of others), I cannot state. It will be sufficient for my

purpose, and sufficient, I trust, for the Court, to shew that steps were taken which proved that the object was not lost sight of, though postponed, from considerations connected with the then political state of Europe, and which circumstances I have no hesitation in saying were the sole cause of my not having specific instructions upon the subject. It is hardly necessary, therefore, for me to state to this Honourable Court, that I sailed from England under the strongest conviction that I should at some future period, when the political state of Europe might make it eligible, receive orders to strike a blow in South America.

Early in February, 1806, I received accounts of the termination of the war in India, and naturally concluded that no exigency could immediately arise in that country, to render it necessary for the Governor-General to apply to the Cape for any military support.

In the course of the same month of February, I also received the news of Lord Nelson's glorious victory off Trafalgar, and an account of the confederacy against France, from an alliance with which power it had not been practicable to detach Spain.

Towards the end of February a Danish vessel, which arrived at the Cape, brought English newspapers, giving an account of the defeat or capitulation of the Austrian army at Ulm.

By the capture of the *Volontaire* French frigate, on the 4th March, 1806, I learnt the defeat of the Russian army at Austerlitz, and that Bonaparte was in possession of Vienna.

This Honourable Court will, therefore, not fail to observe, that the causes which had contributed to suspend any expedition to South America, as a matter of policy, and to change

my original destination to the attack on the Cape, were suddenly done away. The war on the continent had closed so disastrously, as to exclude all hope of the revival of any confederacy which could afford the most distant prospect of success in any attempt to detach Spain from France, and had led to acquisitions by the enemy, which made any effort which was likely to throw a counterbalancing weight into the scale of England most important. And indeed I believe I shall be able, without much difficulty, to satisfy the Court by evidence, that the then Government, under the guidance of the illustrious Statesman who is now no more, had looked to South America, as affording the best prospect for views of that description. The only point, therefore, which remained for consideration was the practicability of the measure, and the safety of attempting it, with reference to the force at my disposal, and without hazard to the security of the Cape. I well knew it to be a favourite object of Mr. Pitt; I knew the causes which had suspended it; and I was well satisfied that my having received no instructions on the subject arose from there not being the most distant idea of those causes being so suddenly removed, by the rapid change which took place in the state of Europe from the successes of Bonaparte. But even under these impressions, and with so favourite an object of pursuit before me, I did not at first contemplate the execution of it, or the being able to carry troops from the Cape for its accomplishment. On the contrary, I directed all my attention to measures of precaution as to the French fleets which were at sea, —to the protection of the Cape and the trade; as will most clearly be established, when I come to state those measures in detail,

Having established the general principles applicable to the nature of the charge, and stated all the circumstances which occurred previous to my leaving England up to the period of the commencement of the expedition, so as to put the Court in full possession of the impressions on my mind upon the subject—having also stated my conduct, and the motives by which that conduct was directed, up to the period of contemplating my departure to the Cape, and the expedition to Buenos Ayres; I now come more immediately to the charge itself: with regard to which it will be incumbent upon me, first to prove that I neither left the Cape exposed to attack or insult, nor the trade of his Majesty's subjects unprotected, which I undertake to make out to the satisfaction of this Honourable Court: thus leaving as the only questions for decision, first, to what extent the disposal of the force under my command was an assumption of discretion unsanctioned by particular direction or authority; and next, whether under the general power vested in every commander of employing his force for the good of the service and the annoyance of the enemy, as far as may not be inconsistent with his orders, the attack on the Spanish settlements in the Rio de la Plata was a justifiable exercise of that discretion, under all the circumstances.

The first subject for consideration was the safety of the captured settlements, and next, the arrangements with a view to the French squadrons and the protection of the trade. The first I am charged with having left unguarded and open to attack and insult, and the latter to have left without protection. I must here call the attention of the Court to the particular words of the charge,—“ And whereas it appears, by letters from Sir Home Popham to our Secre-

“ tary, dated the 13th and 30th of April, 1806,  
 “ that with a view to attack the Spanish settle-  
 “ ments on the Rio de la Plata, for which  
 “ attack he had no direction or authority  
 “ whatever, he did withdraw from the Cape  
 “ the whole of the naval force, which had been  
 “ placed under his command for the sole pur-  
 “ pose of protecting it; thereby leaving the  
 “ Cape, which it was his duty to guard, not  
 “ only exposed to attack and insult, but even  
 “ without the means of affording protection  
 “ to the trade of his Majesty’s subjects, or of  
 “ taking possession of any ships of the enemy  
 “ which might have put into any of the bays  
 “ or harbours of the Cape, or parts adjacent; all  
 “ which the said Sir Home Popham did, not-  
 “ withstanding that he had received previous  
 “ information of detachments of the enemy’s  
 “ ships being at sea, and in the neighbourhood  
 “ of the Cape; and notwithstanding he had  
 “ been apprised that a French squadron was  
 “ expected at the Mauritius, of which he in-  
 “ formed us by his letter to our Secretary,  
 “ dated the 9th of April, 1806, only four days  
 “ prior to his departure from the Cape to the  
 “ Rio de la Plata.”\* I will now state the

\*The following extract from the letter of the 9th of April, upon which this allegation professes to stand, will best serve to evince the careful attention to facts, the candid deduction of inferences which marks the charge. “ General Anker, the late governor of Tranquebar, who is just arrived here on his passage to Europe, informed me in the course of conversation that a French squadron was expected at the Mauritius, but that it *was impossible for that station to supply any flour* to it without looking to the Rio de la Plata or the coast of Brazil for a supply; on which consideration I think employing the squadron in cruising a short time off that coast instead of remaining idle will be a disposition fraught with some advantages, and which I hope will appear so evident to their Lordships as to induce them to approve of the measure.”—Now here is an

la Plata ; but this I have already fully admitted. The then First Lord of the Admiralty ( who, I am well informed, was not in the habit of attending the consultations of his Majesty's confidential servants ) was not acquainted with any thing which had passed in relation to the expedition to South America ; as is evident from the following letter from Lord Barham, in answer to one I had written to him from St. Helena, mentioning the intended attack on the Rio de la Plata.

“ DEAR SIR, Barham-Court, 9th August, 1806.

“ I have received your letter of the 31st April, from St. Helena, and also the former papers relative to Miranda's expedition. If the last had been communicated to me before you sailed from England, I might have hoped to have been useful in promoting it ; but the misfortune of Mr. Pitt's death, and the natural change that has taken place in the administration of public affairs, has, I am afraid, rendered all these views abortive.

“ I can say nothing decisive on your present expedition, as it must depend on your knowledge of the state of India when you determined upon it : but if I had continued in the administration, I should have been disposed to have given full credit to your intentions.

“ Public affairs are in a state of uncertainty ; negotiations are on foot, and Lord Lauderdale sent over to Paris. The country is sanguine, and I hope with reason ; but Mr. Fox's state of health must be a weight in the opposite scale.

“ It is said, that Sir David Baird as well as yourself will be recalled ; I trust, however, that you will succeed in your attempt before that happens.

“ I sincerely wish you success. I have not seen your dispatches to the Admiralty-board, having no acquaintance with the First Lord. I am, however, with much esteem,

“ Yours,

“ BARMAM.

“ P. S. We have been very successful in the disposition of



our squadrons, as far down as the capture of Linois by Sir John B. Warren."

Mr. JARVIS submitted that this letter was not to be received as admissible evidence.

Sir H. POPHAM.—I do not tender it as evidence, but I offer it in the shape of statement, as it will shew that my views with regard to Buenos Ayres and my expedition to that quarter, had, in addition to the distinguished personages I have already alluded to, the warm approbation of the Noble Lord who succeeded Lord Melville at the head of the Admiralty—and the sanction of whose counsel, and whose useful assistance I might have obtained before I sailed from England, had it been deemed expedient by Mr. Pitt, to communicate with that Noble Lord upon the subject.

It is here obvious, as I have stated, that I had no communication whatever with Lord Barham upon the subject of South America: although I knew that La Plata was a part of the Cape station last war, as well as the Mauritius, yet I doubted whether the last place would be considered so this war. Upon writing a letter to Mr. Barrow on the subject, I received the letter of the 2d August, which has been read in evidence on the part of the prosecution, accompanied by a private letter of the same date, stating that he had not been able to get a bomb allowed, but had sent the above-mentioned order for a frigate to the coast of South America; but that it did not appear to be necessary to look out to the eastward, as little was to be apprehended from that quarter; and he added, "that it would only create a jealousy in the commanders in the Indian seas, whose commands extend at present to the Mauritius."

It is publicly known, and officially so to some of the Members of this Court, that, during the late war, our cruisers were constantly either off the mouth of the river, or cruising absolutely off Monte Video. One of the very ships, indeed, (the *Diomede*), which had cruised there, was one of my squadron; and, independently of every other consideration, I had not only the opinion of that respectable officer Captain Rowley, who was on the Cape station last war, that the Rio de la Plata was considered as a part of that station, but it was the unanimous opinion of the officers under my command; some of whom will, I have no doubt, if necessary, give their testimony to this effect. I beg it, however, to be understood, that those opinions were expressed long before our arrival at the Cape.

I have entered at some length into this part of the subject, because an impression has been circulated with considerable industry, that I had no authority whatever to go to the Rio de la Plata; but it must be evident, from the letter of the 2d of August, that the Admiralty considered that river as an enemy's port, which ought to be constantly watched by some of the cruisers under the orders of the senior naval officer at the Cape, and consequently within the limits of his command. Nay, if it were possible that it could be contended, that, although the order directed the sending a frigate, I had no right to carry there my whole squadron, I should answer, that the object of sending a frigate would be nugatory, unless it were allowed to act on the intelligence she might bring. For I would ask whether, if a cruiser had brought an account that two of the enemy's line of battle ships had entered the river totally dismasted, that they were moored off Monte Video, and every ex-

ertion was making to get them refitted for sea, I should not have been justified in sending a force from the Cape to attack them without a moment's loss of time?

But to revert to the military state of security at the Cape. By the well-known zeal, ability, and judgment of Sir David Baird, it was placed in a state of the most perfect safety. The military dispositions of that distinguished officer were so judicious and skilful, as to inspire the firmest confidence in a successful result, even under the supposition that an attempt should be made to wrest this conquest from the British forces; while his political arrangements gave the most general satisfaction to the inhabitants of every description. The garrison had been strengthened by a levy of native militia, and its means of defence were deemed so ample and adequate by Sir David Baird, whose opinion in such a case I considered myself justified in adopting, as he was the most competent judge in military affairs, that this intelligent officer did not hesitate to furnish a detachment of his gallant troops, in consequence of my submitting to him all the information I had received respecting the defenceless state of Monte Video and Buenos Ayres, and my urgent representations to him of the great advantages which our country was likely to derive, particularly at so critical a period, from such a valuable acquisition as the conquest of one or both of those places. Certain I am, that it is not necessary for me to impress on this Honourable Court, that the preference felt by the Dutch colonists and natives for the mild and fostering protection of the British government, would have disposed them to have lent their most cordial assistance in repelling a French force, if it were possible to expect it, as in the event of its succeeding in the

attack, the colony would have become subject to the oppressive exaction and tyranny of the French Government.

If any additional proof were wanting of the perfect state of security in which Sir David Baird considered the Cape after he had furnished me with a detachment of his garrison for the expedition to Rio de la Plata, it is to be found in the circumstance of his having reinforced General Beresford by a second detachment of his troops. This surely furnishes incontrovertible evidence that Sir David Baird considered the Cape in no danger from the weakness of his garrison or means of defence; and shall I be condemned for availing myself of that aid, which his superior judgment felt could be afforded with perfect safety?

In speaking of the state of security in which the Cape was considered by General Baird, I have not yet sufficiently noticed the skilful and judicious manner in which he had augmented his means of defence. But I shall prove to the satisfaction of this Honourable Court, by the testimony of Mr. Browne, who was Master-Attendant at the Cape, that, by the construction of several additional batteries mounted with heavy artillery, no enemy's ship could fairly enter any of the principal bays or harbours in its vicinity, without incurring the danger of being captured or totally destroyed. In fact, Mr. Browne will be able to shew to the Court, that it was the most earnest wish of Sir David Baird, that the enemy might make an attempt to wrest the settlement from the British forces—that he was perfectly satisfied they would find it almost impossible to effect a landing; or, if a landing were effected, to succeed in reducing the place with an army of ten thousand men.

I must now, Sir, particularly advert to a

letter from General Baird to Lord Castlereagh, dated 5th May, 1806, which has been read as part of the charge, but not proved in evidence. I scarcely need remind the Court, that the introduction of this letter of Sir David Baird's into the charge has only been communicated to me since my arrival at Portsmouth on Wednesday last. It states, that a French frigate anchored in Simon's Bay,\* and sent a boat on shore; which boat, with a French officer and her crew, were taken prisoners on their landing: This letter must have been engrafted on the charge with a view of supporting that part which alludes to the protection of the Cape from insult, but more particularly to that which relates to its being left without the means of taking possession of any ship of the enemy that might put into any of the harbours or bays of the Cape. It is intended, no doubt, to endeavour to impress the Court with an opinion, that if I had remained at the Cape with my squadron, the French frigate in question might have been captured. However specious such an idea may, probably, appear, nothing can be more erroneous.

This French frigate is stated to have come into Simon's Bay, where she is said to have anchored; but I shall prove, Sir, by the evidence of Mr. Browne, that she never did enter Simon's Bay, but came to anchor in False Bay, and so far out, that when she was fired at from the batteries in Simon's Bay, every shot fell short. No sooner did she discover, by these discharges of cannon, that the settlement was in possession of the British forces, than she cut her cables, and made all sail into the offing.

Now, Sir, upon the supposition that I had received no intelligence to induce me to proceed with the squadron to the Rio de la Plata, I deny the probability, I might even say the

possibility, of my being able to capture this French frigate. To put the fact in so clear a point of view, as to convince every Member of this Honourable Court that no imputation can possibly attach to me for her escape ; it will only be necessary for me to prove, by the deposition of the same witness, Mr. Browne, that while I was lying at anchor in Table Bay, with the greater part of my squadron, another French frigate (*La Piedmontaise*) chased in there a neutral ship, and actually approached the squadron so near, that from the signal station on the Lion's Rump, she was clearly discovered to be an enemy's cruiser. Notwithstanding that I had received a message to this effect from the officer stationed at the signal tower, it was utterly impossible for me to prevent her from escaping. The general state of the prevailing winds in the principal anchorages at the Cape, Sir, is such, that the utmost efforts of the most skilful and vigilant commander of a squadron, lying there, would in vain be exerted in attempting to overtake an enemy's ship that should use due precaution in standing in for the land to reconnoitre. Some of the Members of this Honourable Court may probably be well acquainted with the bays and anchorages at the Cape, and in the neighbourhood. Those who have a knowledge of them will be satisfied that I am correct in asserting that a British squadron, lying in Table Bay, can seldom or ever get out between Green Point and Robin Island, unless there be a strong northerly wind, by reason of the heavy swell constantly setting in there from the south-west, and the current, which comes from the southward and eastward, and sets to the northward between Robin Island and the Main. Therefore an enemy's cruiser, standing in for that part of the land called the Lion's Rump, would, as soon as she discovered a squadron at

anchor in the bay, be able, under the circumstances before stated, to effect her escape, because a British vessel would, with the south-east wind, which is the prevailing wind at the Cape of Good Hope, have to run down to leeward, that is, to the westward of Robin Island, thereby making a circuit of at least three leagues before she could haul up in chase of an enemy. This, Sir, was exactly the case when *La Piedmontaise*, a French frigate, hove in sight of the signal post, while I was lying at anchor in Table Bay — The south-east wind prevailed in the offing, while there was a dead calm in the bay; and although, on hearing of a strange sail being in the offing, I instantly made a signal for the *Leda* and *Narcissus* to slip and chase, yet it was impossible for those frigates to get out of the bay until the evening of the following day.

Now, Sir, let us suppose that I was lying with all, or a part of my squadron, in Table Bay, or even in Simon's Bay, when *La Cannonnere* was standing in; can it be imagined that she would, on the discovery of my squadron, have continued to do so, much less have come to an anchor, even out of gun-shot? But independently of this, circumstances somewhat similar to those already described would have opposed any efforts I could have made, to prevent her escape. For the winds in Simon's Bay are, in general, so light and variable, that before a ship of war could have slipped and got out of the bay, the *Cannonnere*, or any other enemy's cruiser standing in for the land in that quarter, would have made so large an offing as to afford no probability of success to any ship detached in pursuit of her. I shall only add, that ships lying at anchor in Simon's Bay may be seen at so great a distance by any vessels standing into False Bay, that there is no chance of a capture being made of an enemy's cruiser, which could

charge; the fallacy of which I hope I have clearly illustrated.

Besides, at the time when I left the Cape the winter season was about to commence, during which no ships can lie in Table Bay with safety. Commodore Johnstone justly observed, that when he was sent into those seas on a secret expedition, in 1781, it was deemed unadvisable by himself and General Meadows to attack the Cape in that season. No attack, indeed, on this settlement was to be apprehended from an enemy's force, during the period in which I am charged with having left the Cape exposed to attack and insult.

But how often, I would ask, has the Cape been left without a single ship of war to assist in its defence—during the time it was in possession of the British force last war, was not the flag of the naval commanding officer on the station left flying on board a small vessel scarcely capable of making any resistance? Indeed, in the immediate expectation of the arrival at the Cape of some men of war from England, I left an order,\* dated the 13th of April, 1806, addressed to any naval officer who might arrive here, and be junior to myself; by which order he or they were at perfect liberty either to remain at the Cape, or to follow me to the Rio de la Plata, as should appear most for the benefit of his Majesty's service, after a consultation with Sir David Baird on the subject.

I have already, I trust, repelled that part of the charge which accuses me of having "left the Cape not only exposed to attack and insult, but even without the means of affording protection to the trade of his Majesty's subjects, or of taking possession of any ships of the enemy that might have put into any of the bays or harbours of the Cape, or parts adjacent."

\* See No. 17 in the charge.



I have explained to the Court that the season, at the commencement of which I left the Cape, was adverse to the attack of an enemy on that settlement; which, as I before observed, was a reason assigned by Commodore Johnstone and General Meadows for not venturing on such a measure; and that, on that account also, no hostile operations were to be apprehended in that quarter at the time of my departure for the Rio de la Plata. I have shewn, too, that I took the most active and effectual measures of precaution to afford protection to the trade of his Majesty's subjects in every quarter; and that even had I remained with my squadron in Simon's Bay (for I could not have kept it in safety in Table Bay), there was little or no probability of my being able to take possession of any ships of the enemy which might put in there, or into any of the bays or harbours of the Cape, or parts adjacent.

I must now reply to the sequel of the charge, coupled as it is (in a manner not as I conceive the most candid) with the preceding parts, which I have answered, and, I hope, refuted. This sequel runs thus:—"All which he, the said Sir Home Popham, did, notwithstanding he had previous information of a detachment of the enemy's ships being at sea, and in the neighbourhood of the Cape; and notwithstanding he had been apprised that a French squadron was expected at the Mauritius, of which he informed us, by his letter to our Secretary, dated the 9th of April, 1806, only four days prior to his departure from the Cape to the Rio de la Plata."

I have called the manner uncandid in which this sequel of the charge is drawn up; for it conveys to the mind that I left the Cape at the very moment when detachments of the enemy's ships were expected there, of whose arrival in

the neighbourhood of the Cape I had received previous information.—That this is not a fair interpretation will be manifest, when it shall be seen, by the perusal of the whole of my letter of the 9th April,\* to Mr. Marsden, and by an examination into the particulars of the information asserted or implied to have been thus given by me to the Admiralty respecting detachments of the enemy's ships, that my expressions, in one part of that letter, explain completely those previously used, either in another paragraph of that letter, or in any prior intelligence given by me in other letters; and that I had, in my communications to the Admiralty, fairly disposed of Willeaumez's squadron, which, in fact, was the French squadron said to have been expected at the Mauritius.

What, Sir, can be more uncandid than thus to allude to a part of a letter; and, by not adverting to another part of the said letter, make it appear that the writer (and that writer the commanding-officer of a British squadron in a distant quarter) stands, as it were, before his judges self-convicted of improper conduct by his own official communications? My respect for the Court, and the control which I have endeavoured to impose upon my feelings and my language, prevent me from giving way to the sensations which naturally arise in my breast while I am commenting on such a proceeding. Justly as I have a right to complain of it, I shall content myself with pointing it out to the notice of the Court, and with proving to the conviction of all the Hon. Members of which it is composed, that there is no just ground for the interpretation which is attempted to be impressed on their minds—namely, that I not only knew of the expected arrival of detachments of the enemy's ships at the time when I left

\* See this letter, No. 14 in the charge.

the Cape with my squadron, but had myself actually given to the Secretary of the Admiralty information to that effect. A perusal of the letter in question, with a few remarks, will be sufficient wholly to do away the imputation to which I have just alluded :

“ SIR, Diadem, Table Bay, 9th April 1806.

“ As the season is now very far advanced for lying in this Bay, and the weather particularly unsettled for the time of the year, I propose quitting it with the squadron immediately ; more especially as, from the length of time that has elapsed since we heard of Admiral Willeaumez’s fleet, it is very improbable, consistently with the situation he was in, that he should come here at present.”

Thus, Sir, in the very first paragraph of this letter, so far from my saying that I had received previous information of detachments of the enemy’s ships being at sea, and in the neighbourhood of the Cape, I begin by stating,—that I proposed quitting it with the squadron immediately—assigning, as an additional reason for my departure, that, “ from the length of time that had elapsed since we heard of Admiral Willeaumez’s fleet, it is very improbable, consistently with the situation he was in, that he should come here at present.” I then proceed to remark, that, “ to determine his position at this moment would be impossible, and it would almost be equally difficult to decide on the best mode of applying the exertions of the squadron the ensuing two months to the greatest advantage.”

From the foregoing paragraph it is, I think, pretty clear that I was under no apprehension of the arrival of a hostile force at the Cape, or in any of the adjacent bays or harbours.

My next paragraph in the said letter is, that “ the intelligence we received by La Volontaire, and which has already been transmitted to you for their Lordships’ information, ap-

“ appears materially to incline to the supposition  
 “ that the West Indies is the destination of Ad-  
 “ miral Willeaumez’s fleet ;” but the Court  
 will be pleased, I hope, to give the next para-  
 graph their particular attention, while I observe  
 that this is the part on which this unfounded  
 interpretation of the letter rests.

“ General Anker, the late Governor of Tran-  
 “ quebar, who is just arrived here on his way  
 “ to Europe, informed me, in the course of con-  
 “ versation, that a French squadron was ex-  
 “ pected at the Mauritius, but that it was impos-  
 “ sible for that island to supply any flour to it,  
 “ without looking to the Rio de la Plata or the  
 “ coast of Brazil for a supply. On which con-  
 “ sideration, I think, employing the squadron  
 “ in cruising a short time off that coast, in-  
 “ stead of remaining idle, will be a disposition  
 “ fraught with some advantages, and which I  
 “ hope will appear so evident to their Lord-  
 “ ships as to induce them to approve of the  
 “ measure.”

Here, Sir, I have stated my reasons for sup-  
 posing that the ulterior destination of Admiral  
 Willeaumez’s squadron was the West Indies ;  
 and in the same paragraph of my letter I added  
 what was mentioned to me by General Anker.  
 But it is to be remarked, that this was not given  
 to me by General Anker, or repeated by me to  
 Mr. Marsden, as positive intelligence, but mere-  
 ly as a matter of conjecture.

Every Member of this Honourable Court  
 must be aware that during the progress of a  
 war a variety of rumours obtain circulation,  
 respecting the movements and supposed desti-  
 nation of the hostile naval forces, and that in a  
 distant quarter of the globe some of those ru-  
 mours are wafted in opposite directions, till the  
 event prove that a report concerning the ex-

pected arrival of one squadron at a particular place originated from the circumstance of that squadron having fallen in with a vessel bound to that place, and conveyed through her some intelligence calculated to deceive and mislead as to the real object of its destination, while this false intelligence has the effect of dividing or multiplying this one squadron into two detachments, and thus creating a double cause either of alarm or precaution. This was the case in the present instance ; the squadron alluded to by General Anker was no other than Willeaumez's squadron, which, as I rightly imagined, would either put into the Rio de la Plata or the Brazils for water and refreshments, and then proceed to the West Indies ; which conjecture induced me to dispatch a vessel to Admiral Cochrane on that station, to enable him to be prepared against the enemy's arrival. I next informed the Admiralty of my then intended disposition of the squadron under my command, in these terms :

“ As this letter is to be conveyed by a foreign ship, I shall not enter into any minute detail, but content myself with saying it is my intention to proceed off Rio de la Plata, in the first instance ; to send the *Raisonable* to her destination by the time fixed, the *Diomedé* to Rio de Janeiro to procure rice for the colony, of which it is in the greatest want, and to return immediately to False Bay with the other ships, unless that I should hear that Admiral Linois is at St. Catherine's preparing to cruise for the outward-bound ships, in which case I shall endeavour to intercept him, if it does not infringe on the time of my return to the Cape to receive their Lordships' commands, in consequence of the dispatches conveyed by *L'Espoir*.” The letter concludes as follows :—“ When I have the opportunity of a safe conveyance, to write more fully to

their Lordships, I hope the additional reasons I shall then give will be sufficient to satisfy their Lordships of the expediency of the measures which I am now about to adopt."

Having thus brought the whole of this letter of the 9th of April, 1806, before the Court, I submit to their consideration, whether, on a candid and dispassionate review of its contents, I am not borne out in asserting, that no passage in it can be fairly and justly construed to imply that I apprehended or expected the arrival of a French squadron at the Cape about the period of my departure from that settlement on the expedition to the Rio de la Plata? My intended departure to that river before any communication had taken place with General Baird as to troops, and before, therefore, I could contemplate the expedition to Buenos Ayres, is proof of the interpretation I put upon the intelligence I had received, namely—that no hostile squadron could be then expected at the Cape; but if there were any truth in the intelligence, that I was more likely to meet a French squadron in the Rio de la Plata than at the Cape.

As to the circumstance of my leaving the Cape only four days after I had written to Mr. Marsden this letter of the 9th of April, my reasons for so doing are fully detailed in the official letter which I addressed to him as Secretary to the Board of Admiralty, on the 13th of April, which has been read to the Court as part of the charge, and which I now request to be considered as again read.

These reasons are still more enlarged upon in a letter I addressed to the Admiralty from St. Helena, under the date of the 30th of April, to which the letter of that date read on the part of the prosecution is only *an addenda*,\* and

\* This letter was not inserted in the minutes, and for what

therefore I must now desire to have the material letter read in this place.

Here Mr. LAVIE was heard to suggest something to the accused, and

Mr. JARVIS immediately observed, that no legal assistant was permitted to *speak*; although the advantage of such counsel was allowed to the prisoner.

Mr. LAVIE expressed a hope that it was not culpable to *whisper* his client.

The PRESIDENT corroborated the opinion of Mr. Jarvis, and remarked, that if there were anything in the letter alluded to, or in any other letter to be adduced on the defence, the publication of which might be injurious to the public service, it ought not to be offered in such a way as to expose it to publicity.

Sir HOME POPHAM.—In consequence, Sir, of a letter which, since my arrival at Ports-

reason cannot precisely say. It may be seen, by referring to it in note B. in the Appendix, that Sir Home Popham in this letter solicited, in the most pressing manner, for two regiments to be sent after him to the Rio de la Plata. Lord Howick asserted in the House of Commons, that upon the *first intelligence* of the enterprise being received by Administration, reinforcements were forwarded to Sir H. Popham with all possible expedition. When this assertion was made by Lord Howick in order to meet a charge of dilatoriness, &c. advanced by Mr. Canning, it must be supposed that the Noble Lord was ignorant of this letter, although received by the Board of Admiralty, over which he presided, so early as the 24th of June. For the request of reinforcements contained in this letter, dated so far back as the 30th of April, was entirely unattended to. It will be obvious, that had such request been complied with, the reinforcement it referred to, would in all probability have reached Buenos Ayres in time to have answered every purpose of its intention. This circumstance then may be presumed to have had some influence upon the Admiralty or its candid counsel in bringing forward an extract only from this letter, although *denominating* it the letter of the 30th of April. The motive of the omission seems not, upon the whole, so very difficult to ascertain.—*Editor.*

mouth, I have received from the Judge Advocate,\* it was my determination to consult most assiduously, the point to which your remark refers; and I beg this Honourable Court to understand, that no consideration of personal interest, shall ever induce me to make any proposition, which might be likely even to hazard the public good.

The PRESIDENT asked whether it was material to the case of the prisoner, to have the whole of the letter referred to, read to the Court.

Sir HOME POPHAM.—In my judgment it is—but yet I shall in this, as in all other cases, defer to your advice.

(Here the letter was read, but the memoir it enclosed was not. Sir Home proceeded.)

The Court is thus in possession of the reasons which I gave to the Admiralty, for having come to a determination to proceed as I did to the Rio de la Plata on the 13th of April 1806; and from the validity of those reasons, added to the explanation, which I have entered into, of my letter of the 9th of April, referred to in the charge, I should hope I have fully and clearly vindicated myself from this part of it, and repelled the insinuation intended to be conveyed, by the manner in which my letter of the 9th of April is therein mentioned.

If I be asked, why I was so anxious to leave the Cape in such apparent haste as not to wait for the arrival of the men of war expected from England, my answer is this;—that I was apprehensive that any delay in my departure, added to the probable length of the passage to the east coast of South America, might defeat the object of the expedition, by retarding my arrival in the Rio de la Plata until that season

\* See note M in the Appendix.



lantry and good conduct in the officers and men under my command. But, Sir, although the Admiralty chose not to express the smallest approbation of the conduct of the naval force at the reduction of the Cape, permit me to remark to the Court that on acknowledging the receipt of my dispatches relating to that event, they on the very same day acknowledge to me the receipt of another letter\* inclosing a copy of one which I had received from that active and able officer, Captain Donelly, then of the *Narcissus*, (giving an account of his having driven on shore a French privateer): And in making this acknowledgment they desire me to acquaint him, that their Lordships highly approve of his conduct on that occasion. Must it not appear to this Honourable Court and to the world not a little extraordinary, that the same Admiralty Board which could liberally bestow their applause on the conduct of a captain of a frigate in the destruction of an insignificant French privateer, could withhold their approbation from another officer who commanded a squadron of his Majesty's ships, and from all those who had acted under him, and were employed in the capture of a settlement deemed so important, in a military, political, and commercial point of view, as the Cape of Good Hope? Whatever might have been the opinion of the Government of the time as to the importance of the reduction of the Cape, with reference to the thanks of Parliament, so gratifying to those who receive them (to which it would be presumption in me to suppose I had any claim), I may venture, I believe, to state, that this is the first instance of a conquest of this description having been

\* See page 451.

made by a joint armament, in which some expressions of approbation at least from the Lords of the Admiralty has not been bestowed on those of the Navy who had successfully performed their orders.

For it must be recollected, that as to the Cape at least, the orders were specific and precise, and those concerned in the enterprise were engaged in the strict performance of their duty. And here, Sir, I may be allowed to remark, that the withholding from those under my command this naturally expected and invariable reward of zeal, valour, and perseverance, successfully exerted in their country's cause, was to them the more mortifying, as the army, in whose efforts and gallantry they fully participated, was cheered by the approbation of their superiors, and had the consolation of being informed, that their labours and success were acceptable to those to whom they look for encouragement and reward. On this occasion, I hope it will not appear vanity on my part to shew the different light in which our conduct was viewed by the Governor-General and Council in India, who were pleased to transmit to me the following testimony of their approbation :

*" Commodore Sir Home Popham, K. C. commanding his Majesty's Naval Forces at the Cape of Good Hope.*

*" Sir,*

*" WE have the honour to acknowledge the receipt of your dispatch of the 9th of February, intimating that you had directed the Commanders of the Honourable Company's ships Streatham and William Pitt to supply the naval store-keeper at the Cape with the articles enumerated in a list inclosed in that dispatch ; we have the honour to express our entire concurrence in the necessity and expediency of that measure.*

"We request you will accept our acknowledgments for the transmission of a copy of your dispatch to his Excellency Rear-Admiral Sir Edward Pellew, under date 31st January, containing the details of the operations of the naval and military forces, under your command and that of Sir David Baird, employed in the late successful expedition against the Cape of Good Hope.

"On this occasion, we cannot refrain from the expression of our admiration at the able dispositions of the naval and military forces engaged in that arduous service, and the bravery, activity, and exertion, manifested by the officers and men employed on it, which secured the conquest of that important colony.

"The judgment, activity, and naval skill, manifested by you on that occasion, are consistent with those eminent qualities which have uniformly distinguished your exertions in the service of your country.

"We request you will accept our cordial congratulations on the success which has attended his Majesty's arms in the important capture of the Cape of Good Hope.

"We have the honour to be, Sir,

"Your most obedient humble servants,"

"G. H. BARLOW,

"G. UDNY.

"J. LUMSDEN,

"Fort William,  
10th June, 1806."

But to myself and my associates, some of whom had engaged most actively in the service on shore, and all of whom had exerted themselves in the landing, and assisting the troops with that ardour and perseverance so characteristic of British seamen, to which I had, as their commander, endeavoured to do justice, not one solitary expression of approbation was, as the Court have seen, communicated in the answer of the Admiralty. Yet I am to be condemned for having exposed, even to imaginary hazard, that acquisition which appears not to have been worth the thanks of our superiors—the value of

which thanks, though so easy and cheap for them to bestow, I need not expatiate upon in a Court of British Officers, whose actions and whose lives would be to the world the best proof of the estimation in which they are justly held. But the importance of the capture was passed over in silence, when I and those under me might have been gratified; but it is loudly enhanced, when the object is to depress me. Whence this difference?—I leave it, Gentlemen, to your reflections—I leave it to the reflections of my country!

By permission of the Court, I shall next proceed to show, as I have already done in part, that whatever dissatisfaction the Admiralty (which had succeeded to that Board under whose orders I sailed from England) thought proper to manifest for my having exercised my own discretion in undertaking the subsequent expedition to the Rio de la Plata; yet my conduct, in the execution of that enterprise, was such as to draw from them the most unqualified approbation, as appears from the letter of the 25th of September, which I have already read in my defence.

The natural inference to be drawn from the perusal of that letter is, that the Admiralty Board, at the time when it was written, considered my recal as a sufficient mark of their disapprobation for my having left the Cape with my squadron, and attacked Buenos Ayres without orders. But the panegyric passed on my conduct, and those under my command, strongly marks the high opinion entertained of the importance of the conquest. For if Mr. Marsden's letter of the 25th of September, acknowledging the receipt of my account of the surrender of Buenos Ayres and its dependencies, be compared with his letter in answer to mine of the 13th of January, announcing the capture

of the Cape, it is fair to infer from the circumstance of the Admiralty Board having expressed their unqualified approbation of my conduct in the conquest of Buenos Ayres, and of their having withheld from me every sign of satisfaction in regard to my proceedings in the reduction of the Cape, that, in their estimation of the comparative importance to the country of the two places, they set a much higher value on the acquisition of Buenos Ayres than on that of the Cape.

But, Sir, if my ardent zeal for the service of my country, has, in the opinion of any of the Members of this Honourable Court, carried me beyond the exact limit of my instructions, I submit that I have already suffered a more than adequate punishment; not merely by having been deprived of my late command, but from the degrading manner in which I was superseded and recalled, as must appear to this Honourable Court, when they find that my solicitation for the use even of a transport was peremptorily refused, and that I was left to take my passage to England in a small prize-brig, with the aggravating circumstance of the few men of the squadron put on board to navigate this vessel home being taken from her by the orders of my successor, Admiral Stirling, to whom I was scarcely known, and to whom therefore I could have never given personal offence.—For the proof of these facts I shall refer to the evidence of Captain King.\*

Whether the persons who gave these orders, or the admiral who executed them, thought they were the best means of upholding the character of a British officer commanding in chief, or whether they or he judged this was the most

\* See the correspondence on this subject in the Appendix, note.

proper method of shewing others the extent of their power, I will not presume to determine ; but of conduct so unusual, so unprecedented, and so unhandsome, I assure myself no Member of this Court, nor any other person now present, can recollect an instance.—Humble, however, as my accommodation was, and exposed as I was to capture, in a vessel without a single gun to defend her, I reached this country without accident.

The delay of Admiral Stirling's arrival on the Rio de la Plata, owing to the very unusual length of his passage, I shall always consider as a providential circumstance. For I can assert, without fear of contradiction, that his orders were to evacuate that settlement ; and, but for this circumstance, which afforded time for the arrival of the Pheasant sloop with counter orders, South America would have been abandoned. Whereas, I now may safely venture to predict, that the arrival of the force under General Achmuty has long since repaired the misfortune which befel my gallant friend General Beresford, by putting the British forces in possession of Monte Video ; and, I trust, not only rescued that distinguished officer and his brave army from the hands of the enemy, but fully punished the perfidy of those men who, whilst on their parole of honour and in the complete enjoyment of personal liberty, violated the one, and availed themselves of the other, to combine means for the attack in which they unhappily succeeded.

But, Sir, the unhandsome treatment which I have experienced, and of which I have just reason to complain, had no influence on my mind when I could be in the smallest degree instrumental in promoting the good of my country ; which is fully shewn by my correspondence with Admiral Stirling. I here beg leave to

read the following letter, to convince the Court of the accuracy of this statement ;

" DEAR SIR,

" Tuesday Night, 3d Dec. 1806,

" I have particularly examined the Master of the Duke of Kent, who sailed from England on the 24th of September. From the result of that examination, the circumstantial detail of the meeting of the Council of Trade, which is given in the newspapers, on the subject of Rio de la Plata, and from the contents of my own private letters, I cannot but feel a conviction that his Majesty's Government is now determined to follow up, with some considerable energy, the scheme which I had the honour of submitting to them, of attacking all the enemy's possessions of this country : and however decided their opinion might have been to abandon this project when you left England, I trust a very few days will give you the most positive proofs, that the subject has been reconsidered, and a contrary line of conduct has been acted upon.

" Under a conviction of this nature, so well supported in my judgment by collateral circumstances, I cannot refrain from offering you, in the most sincere and undisguised manner, (prompted, however, very materially by the sanction you gave me this morning in conference), my sentiments on the most advantageous line of service for the accomplishment of the great object in question.

" I think Monte Video should be the first object of attack, as the possession of that point gives every facility to the reconquest of Buenos Ayres. As a preparatory measure I think some more of the transports should have heavy guns put in them from the men of war, ready to attack the south wall of Monte Video, when the army advances to the peninsula of the town. I have already armed three transports and fitted two bombs for the same service.

" The capture of Maldonado has enabled us to mount our cavalry, and put the army in possession of some artillery, of which it was before almost entirely destitute, and the little service that it has seen has materially improved it for effective service.

" It is not my intention, nor is it necessary at this moment

to enter into any detailed proposition, because, I trust, you feel, from the assurances I have given you, that you can command that at all times ; and I take this occasion of repeating that, whatever my private feelings may be on the subject of my sudden recal from this river, they are totally inoperative on my mind as a public officer. *I feel the same ardour and the same zeal for your success as I should for my own, and indeed it is natural, in every thing that relates to South America, that I should feel so, because the more brilliant your success is, the more it must bring to the recollection of my country the sound principles on which I first presumed to act, and the hardships of a squadron in a close blockade, in this river during the winter.*

"I have now, Sir, only to request, that if you should determine to remain here, and any attack takes place while I am on the spot, that you will allow me to act as your honorary aid-de camp, or in any situation where I can impart to you, as occasion may require, the result of seven months local experience of this country, and at the same time to be the bearer of your dispatches to England. This will promise me a more certain return than the *detour* of St. Helena, though probably you may think it necessary on some further information to dispatch a ship direct, as ministers will be most anxious to hear, if they pursue offensive operations here, that you will be on the spot to act with their first reinforcements. Sir Edward Pellew will be at the Cape at the latter end of this month with a very strong convoy on its way to Europe, and it is likely he will not stop long at St. Helena. I shall have the pleasure of shewing you Sir Edward's letter to me on that subject, which will better enable you to form an opinion of his motives.

"To Charles Stirling, Esq.

"I am, &c.

Rear-admiral of the White,

HOME POPHAM."

&c. &c. &c."

Having described in the most fair, candid, and, I trust, respectful manner, all the motives which urged me to proceed to the attack of the Spanish settlements on the Rio de la Plata, I now beg



leave to call the attention of this Honourable Court to the consequences which have already ensued from this expedition.

In the first place, then, I humbly presume, that it is but fair to infer, that his Majesty's Government, notwithstanding the change which has occurred among its members, highly approved of the enterprise, from the energy with which they are following it up, even at this very moment, when I am vindicating my conduct for having undertaken it without positive orders. The more they reflect on the advantages which this country might derive from the acquisition of those valuable possessions, the more do they augment the means of insuring the conquest to which I have directed their attention. Were this not the fact, why, I would ask, have his Majesty's Ministers formed with that view, armaments more than adequate to the task of conquering all the Spanish possessions on the east coast of South America? These extensive armaments are already gone or are on the point of sailing to complete the great object which I successfully begun, though with means comparatively so trifling, and with merely the removal of my squadron from a state of inactivity to enterprise—which removal was attended with no additional expense to the country.

I am naturally led to these observations by the mode in which the Board of Admiralty has shaped the charge. I am not accused of having, with inadequate means and with insufficient preparation, undertaken the attack on Buenos Ayres. The reasons for this will appear obvious when I come to comment, as I shall now do, on the instructions to Sir Samuel Achmuty, the officer sent out to prosecute the enterprise that I had so happily begun, and which officer,

as already appears to the Court, was recommended to his Majesty's Ministers by General Baird as a proper person to be employed on this service.

Then Sir Home proposed a reference to the instructions sent to General Achmuty. There might be some delicacy in publishing such a document, but he submitted it to the consideration of the Court as evidence of the value which Government attached to a settlement in South America.

Mr. JARVIS considered this paper as quite irrelevant to the subject of the charge. If however the Hon. Captain thought it material to him to have it read, he should not resist his wishes. He might take advantage of it in the way of statement, but he must object to its insertion in the minutes, being totally inadmissible in the shape of evidence.

Sir H. POPHAM.—I lament that the learned prosecutor should so often give me occasion to complain of the advantage he takes of my incompetency to contend with him upon questions of law. He has it in his power to weaken if not to destroy any objections of mine, while he can gloss over his own—by the mere influence of assertion, to which an authority attaches in consequence of the presumption, very naturally prevailing, that a lawyer knows his profession; and also perhaps in consequence of the hope entertained by some that a lawyer is likely to be candid in his definitions of law, when addressing men who are not apt to have devoted much of their time to the dry study of legal knowledge. But if the learned prosecutor would quit the stronghold which professional character and technical knowledge affords him, and enter with me upon the broad field of justice, I should not shrink from him. The learned prosecutor has not attempted to sustain any of his objections by

argument, or by any other authority than his own, and against that unsupported, I feel myself warranted in protesting. For the learned counsel has, I must say, not evinced towards me that candour, which should entitle his authority to any weight in my estimation. Taking advantage of the absence of my counsel, he presses upon me a contest about legal points, with which he knows that I must be comparatively unacquainted. Under such circumstances the Court must feel the disadvantages of my situation. According to the general practice at courts martial heretofore, one officer contended with another, and thus the accuser and the accused were on equal terms. But now for the first time I am placed in competition with a lawyer, who endeavours to deprive me of the liberal practice of a Court Martial in order to place me within the narrow limits of a Court of law ; and narrow indeed they must be according to his description.

Having mentioned these things, I shall leave it to this Honourable Court to decide. With respect to the document referred to, I do not wish it to be admitted in such a shape as to become public, if any degree of injury be apprehended from such publication, but I am very anxious that it should be laid before the Court.

The document was produced, but not inserted in the minutes. Sir Home Popham resumed.

In these instructions to General Achmuty, a copy of which was transmitted to the senior naval officer at the Rio de la Plata, and which I am prepared to prove from a copy given me by the Admiralty, the utmost anxiety is expressed by his Majesty's present Ministers, in the event of any misfortune having happened to General Beresford, to obtain such a footing

on the continent of South America, either in the same or in some adjacent part, as might enable him (General Achmuty) to wait the arrival of a further force; this force consisting of 3000 men, which is stated *not* to have been intended originally as a reinforcement to General Beresford, but for a service of very considerable importance, which force however, "he is authorised to detain until his object be attained." In a preceding part of these instructions, General Achmuty is enjoined not too hastily to abandon the attempt of gaining a footing in South America.

Is it possible for me to avoid feeling and expressing some satisfaction, when I reflect that, notwithstanding the reverse of fortune which had occurred, I had anticipated not only the wishes of the last, but also of the present Administration—that I had secured a very strong position, suited to the views of his Majesty's Government; that I had obtained so firm a footing on the continent of South America, that General Achmuty would find the object of his expedition, in a great measure completed before his arrival; and that the 3000 men, destined to another object of "very considerable importance," would be in consequence at liberty to pursue their original destination?

If then this force, destined for an object so highly important in the opinion of his Majesty's Ministers, were thus ordered to be diverted from the pursuit of that object in order to succour General Beresford, and in the event of his having been obliged to surrender, to enable General Achmuty to follow up the enterprise for having undertaken which I am now arraigned, and to use his utmost endeavours to establish himself in some part of the coast of South America; of how much greater importance must not the acquisition of a secure port

in the Rio de la Plata, and especially one so tenable as that of Maldonado, be considered by those same Ministers? Never, Sir, could I for a moment contend that success could justify neglect or breach of duty; but conscious that I am not open to such a charge, it is impossible for me not to feel gratified in reflecting on the circumstances I have just stated.

The proclamation, Sir, issued on the 17th of Sept. 1806, sufficiently shews the encouragement which the members of his Majesty's Government were anxious to give to the spirit of our commercial men, depressed beyond example by the unprecedented measures taken to exclude their exports from the continent of Europe, and the readiness with which they were pleased to meet my ideas on this particular point, by inviting all British subjects to trade with Buenos Ayres, and the other settlements on the Rio de la Plata.\*

With regard to the value attached to the conquest of Buenos Ayres in a political point of view, and which, as I have before observed, was one of the principal motives that urged me to undertake the enterprise, I cannot vindicate its importance more clearly and undeniably, than by quoting to the Honourable Court, the language used by Lord Lauderdale, his Majesty's Plenipotentiary at Paris, during the

\* Upon the proposition for reading this proclamation, Mr. Jarvis objected as the proclamation was not evidence; but the learned gentleman was induced to wave his objection.

Sir Richard Strachan would object to the reading of such papers, as serving only unnecessarily to take up the time of the Court.

The Court however allowed it to be read, but it was not inserted in the minutes; but see it in note S. in the Appendix.

late negotiation for peace, to Mons. Talleyrand, the French Minister for Foreign Affairs. In a note written by Lord Lauderdale to the said Minister, on the 19th day of September, 1806, his Lordship says, "When the undersigned reflects that he came to Paris, authorised to conclude peace upon terms understood to have been proposed by France; that notwithstanding the refusal of his Imperial Majesty of all the Russias to ratify the Treaty signed by Mr. D'Oubril, and *the splendid successes obtained by his Majesty's arms in South America*, he was authorised to give assurances (as he had the honour of doing to his Excellency the Minister for Foreign Affairs) that the demands of his Court in its own favour would not in consequence of these successes be materially increased."

Is not this, I ask, language of which I have reason to be proud, inasmuch as it conveys, in a manner the most direct and unqualified, the opinion entertained by his Majesty's Government, of the successes, in the planning and accomplishment of which I bore so active and so considerable a share? If Lord Lauderdale called the successes splendid, in an official note to the French Minister, surely it will not now be contended that they were not so considered by that Cabinet which deputed him to negotiate the late projected treaty for peace! And although his Lordship adds, that the demands would not, in consequence of these successes, be materially increased, yet this tone of moderation diminishes not their splendour; nor does it in the smallest degree detract from the merit of those by whom they were achieved. In fine, whatever difference of opinion may exist respecting the policy of extending our colonial conquests, there seemed to me but one senti-

ment entertained by his Majesty's Government and by the country at large, in regard to the well-timed acquisition of Buenos Ayres, which, in the intended pacification of Europe, was, it is evident, of sufficient weight, to incline the political balance still more in favour of England.

For if that negotiation had terminated in a peace, upon terms honourable and advantageous to Great Britain, it will not be denied that the character of those terms would have been influenced at least in some degree, by the success of his Majesty's arms in South America.

Before I conclude, I must complain of the mutilated state in which the Admiralty Board has presented to the public my letter of September last, giving an account of the recapture of Buenos Ayres. Most unfavourable opinions and prejudices have been excited against me by these mutilations. In fact, several persons have called on me for an explanation of the Gazette letter. I am compelled to notice the circumstance, not only in justice to myself, but also to that gallant officer General Beresford, who, I trust, has long since been released from captivity through the success of his Majesty's arms. The comparison can only be made by reading my original letter, and the publication of it in the Gazette.\* I here beg leave to read my last letter to the governor of Monte Video, on the infraction of the treaty under which General Beresford surrendered.†—Read in court, but not inserted in the minutes.

\* See note C. in the Appendix.

† When this letter was proposed to be read,

The President asked whether it was evidence or material to the charge.

Sir H. Popham replied that he felt it material to the honour and character of a British officer. He was aware

I must now advert to the papers of the 14th and 24th of September, and 21st of November, and the inclosure in that of the 24th of September, which have been lately introduced into the charge. The latter I never saw, or heard of, until read in Court; nor was I informed until my arrival at Portsmouth, that any of these papers were to be adduced against me. Their object was, I presume, to shew the sentiments of the Government under whose orders I sailed, on the subject of the future direction of my force. But it was known to my prosecutors that I never received any of those papers; as the Belle packet, by which one of them was sent, was captured, and the Thalia, which conveyed the others, never went to the Cape. The subsequent opinion however of the Government, founded also on subsequent hasty, and as it appeared inaccurate information, cannot in any case be evidence against me, or involve me in any censure for having used my force as I did, having had no orders for my direction after the capture of the Cape; and still more having no reason to think or even to suspect that the objects to which these letters referred could have been in the contemplation of Government, or that events would arise to call for such orders.

The correctness or impropriety of my conduct, must depend on that which I either knew, or ought to presume, or could reasonably suppose might have been the wishes of the Government under whose orders I sailed; and those wishes I have, I trust, sufficiently detailed.

that it was not relevant to the charge, but from the motive he had assigned it was his particular wish to have it read.

For a copy of it see note D. in the Appendix.



In addition I might observe, that these orders could not operate against me in another point of view. For before I could by any possibility have received them, I knew that the intelligence on which they were founded was wholly false, and that peace had been made in India. In proof of which, I beg leave to read General Baird's letter to Mr. Windham, in answer to the dispatches which he received on this subject :

SIR,

Cape Town, May 27, 1806.

I HAD the honour of receiving by his Majesty's ship the *Adamant*, the duplicate of a dispatch from Lord Viscount Castlereagh, bearing date the 10th of September, 1805, and conveying to me his Majesty's commands to detach from this colony such a proportion of the troops, under my command, as might be necessary for the security of the British possessions in India.

I am most happy to repeat, that the general tranquillity which now reigns in that quarter, will render it unnecessary for me to make such detachment.

I have the honour to be, &c,

DAVID BAIRD.

Right Hon. W. Windham, &c.

The receipt of these orders, therefore, had they come to my hands, could not have operated upon my conduct unless, as before-mentioned, to corroborate my determination. For such orders afforded no reason to suppose, that for any great and important object, the withdrawing part of the force from the Cape would be a measure likely to excite the displeasure of Government.

I have now stated all that appears to me necessary to lay before the Court, on the subject of my conduct as an officer, with reference to the military question involved in this charge,

One subject, however, for observation, still remains, and it is one that deeply interests my character and feelings,—one upon which I owe to accident and good fortune that I am in possession of any evidence, as I left the Rio de la Plata without the least suspicion of being called upon to appear before a Court Martial. I am aware, Sir, that my justification has already extended to a great length; yet, as I conceive it to be incumbent on me to omit no circumstance that can at all tend to illustrate the views which influenced my conduct during the expedition to the Rio de la Plata, I must solicit the indulgence of the Court while I state, as briefly as possible, a few facts which may serve to shew, that in the whole course of my proceedings, as commanding officer of the squadron in that river, I was never actuated by any selfish consideration; but that, from the time of the surrender of Buenos Ayres to his Majesty's arms, until the period of its being wrested from our possession, I made every sacrifice which might convince the world, that the good of my country was my sole object in having undertaken this expedition without positive orders. I am the more anxious to establish this, because I have had the mortification to hear it intimated since my return, that sordid instead of honourable motives, operated to induce the undertaking of this expedition. I am proud to have it in my power, not only to rescue my own character in this respect, but to prove that I have not degraded the profession to which I belong, by permitting unworthy motives to operate on my conduct as an officer: I should not have wanted precedents to bear me out even in such conduct; but though I have quoted precedents for my justification, as to the exercise of my discretion, I should disdain to avail

myself of similar authority, to palliate cupidity or injustice.

In proof of my conduct in this respect, permit me, Sir, to recal to the attention of the Court, that immediately on the surrender of Buenos Ayres, all the property afloat contained in upwards of one hundred and eighty vessels, to the amount of at least a million and a half of dollars, was given up to the proprietors by proclamation—which I submit was an evident proof of my sincere inclination to conciliate the minds of the inhabitants of every description, and to convince them that the expedition was undertaken with views diametrically opposite to those which attach to a predatory incursion. If it should be suggested that I could not have manned even a very small proportion of those vessels, I would reply that I might have disposed of them at an inferior price to their respective proprietors.

Such was my conduct at the time of the surrender of that town; and on a contemplation of every event which might happen from the interior of the country, although I had then no reason to apprehend that an attempt would be made to dislodge the British forces, I acted with the same disinterested regard to the public service respecting large quantities of quicksilver and bark, to the amount of upwards of three millions of dollars, which were in small and very convenient packages in the castle near the quay, and might have been embarked in the course of three or four days. But I would not suffer any of the valuable merchandize whatever which might be considered as appertaining to the captors, to be shipped before the squadron should be completely victualled, in order that I might be ena-

bled more effectually to blockade the river in case of a reverse of fortune ; and the whole of this property was ultimately recovered by the enemy. Moreover I proposed to the captains and officers of the squadron, and it was generally agreed, that we should present to Government whatever armed vessels might be captured, and be deemed fit for his Majesty's service. Among these was the *Neptune*, a fine ship of twenty guns, which had been formerly a Liverpool privateer, and had been taken by the Spaniards, together with several large armed schooners and gun-vessels. In short, on all occasions I inculcated and enforced, both by precept and example, the doctrine of sacrificing private advantage to the public good, and of regulating our proceedings by what might appear most for the honour and glory of the British nation. I am most happy in this opportunity of rescuing my character in this public manner, and by evidence before the Court, from the imputations which have been cast upon it in this respect.\*

If it be said that I did not in my letter to the Admiralty fully detail all the motives which had led to my undertaking the attack of Buenos Ayres ; if the statement of these motives should appear less ample and less detailed than they ought to be, compared with those which I am now laying before the Court, it is because I conceived that I was addressing them to men with whose general views and intentions on the subject I was already acquainted, and who were all aware of the inducements to this undertaking. From those

\* Vide Lord Howick's speech in the debates of the House of Commons upon the motion for an address to his Majesty at the opening of this session.—There the reader will find a liberal specimen of such imputations, and of the prejudgment of Sir Home Popham's case.—*Editor*.

by whom my letters were in fact received, no intimation ever reached me that these reasons were insufficient, nor has any supplementary explanation been required. I have already said, that I did not receive any intimation of an intention to call me to account. I regret the silence of the Admiralty towards me, in both these particulars. Had they called for my justification at an earlier period, it might perhaps have satisfied them that there was no ground for bringing me before this tribunal; and at all events the notification of the design to accuse me would have given a fair and surely not too favourable warning to me to return prepared with all the means of my defence. Sufficient means I hope I have in the statements I have made, and in the evidence which I have to submit to you; but it is a little hard to be deprived of the testimony of those who, having been the witnesses of my conduct during the whole of my command, might depose most powerfully in my vindication; and this privation, which I cannot think accidental, I owe to the silence of the Admiralty.

I have at length concluded the statement of facts, and the observations which appeared to me necessary to enable the Court to form a just judgment of my case, and in doing so I feel that I have unavoidably been obliged to occupy a considerable portion of your time—I fear that I have trespassed upon your attention; but yet before I finally close, I must again shortly revert to the point most important, because it does not apply to my case only, but to that of every officer in the navy—I mean that of the discretionary use of authority, and the acting without precise orders. Indeed, if an officer commanding in foreign stations is never to

avail himself of information which he may receive, or may not venture to use his own discretion, or to undertake an expedition against an enemy's possessions without precise and immediate orders from home, which cannot arrive until the moment for action shall have elapsed ;—if he is to be so strictly and permanently bound by the letter of the instructions under which he sailed from England, that even after the full and happy accomplishment of the object to which those instructions were directed, he shall not be at liberty to undertake and accomplish any other, however within his reach—however important in itself or in its consequences—however pointed out to him by new information and by increased facilities—and however nearly connected in many important points of view with that which he was originally sent to accomplish : if this is to be the rule and limit of an officer's exertions in a situation of such trust and confidence, the result will be, I venture to foretel, ruin to the British navy. It will lead to the entire cessation of all acts of enterprise, and to the total extinction of that daring spirit which has so long bid defiance to all opposition ; because an officer will be deterred by the reflection, that for venturing to attack or to annoy the enemies of his country without positive instructions, his conduct may be prejudged by a superior authority at home, and (as in the order for holding the present trial) it may be stigmatised *as a flagrant breach of duty that should not pass unpunished.*

I must now, Sir, before I conclude my defence, and put myself upon the judgment of the Court, draw your attention, in a few words, to what I humbly conceive are the main points for your consideration.

On your decision in this instance depends the future conduct and enterprise of the Navy of Great Britain; always bearing in mind, that I stand before you, not for having failed in the fulfilment of orders, but for having done more than my strict duty against the common enemy. The interest that I have in the result, deep as it is, is trifling compared with that which must be felt by every officer in the navy—I may say by the nation at large.

As on the one hand you are called upon to consider and decide upon my case, so as not to sanction, or authorise, by your judgment, a lax interpretation, or careless execution or neglect of orders; so on the other hand you are called upon, by a due regard to the interest of the Navy of Great Britain, and, as involved in this interest, the safety and independence of a nation, which looks up to that Navy for protection, not to check that energy and spirit of enterprise, which, if once affected by an unfavourable sentence on me, passed by such a Court and so composed, may not easily be revived. I consider myself as an humble individual, standing before you on a charge deeply affecting my character, but more deeply affecting the future interests of the Navy. My case must be decided on these principles applied fairly to the circumstances in which I was placed. It is for you, Sir, and the Honourable Members of this Court, to determine whether an officer, circumstanced as I was, employed as I have been on previous occasions, led on, by a singular and connected chain of circumstances, to consider this enterprise as a favourite object, not of my own ambition, but of the wishes of a great and distinguished minister, on whose approbation would have followed, not merely protection, but probably commendation, honour, and reward—having been originally, and so lately, ap-

pointed to carry it into execution, diverted from it only by my own suggestion of an intermediate expedition—having a full and confidential knowledge of all the circumstances which for a time delayed the execution; and hearing in a distant part of the world, without means of immediate communication with Government at home, that all these obstacles had been done away—having also means at my disposal adequate, as I thought, to the end; and believing that in the then state of Europe, and particularly of my country, the immediate execution of this plan was most important—It is for you, Gentlemen, I say, under all these circumstances, to determine whether I was justified according to my orders, or whether I am not to stand excused for having hazarded this exercise of discretion.

In your hands I put my case, with confidence; satisfied that its importance and the attention I have received, will ensure me the benefit of all the circumstances I have stated, and of the arguments I have urged. On these grounds, I humbly hope and trust that I shall receive from the justice of this Court an **HONOURABLE ACQUITTAL**.

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*[It will be observed that this defence materially differs from that published in Mottley's edition of the trial—because the latter contains nothing more than was written in the paper delivered into court, and inserted in the minutes as Sir Home Popham's defence. But to this paper, as it will appear to the reader, Sir Home did not confine himself; and the reporters took particular pains, whenever he threw down his written defence, for the purpose of dilating on any subject, to seize all his ideas in the most accurate manner, to lay them before the public.]*



# LETTERS, &c.

REFERRED TO IN

## SIR HOME POPHAM'S DEFENCE,

And inserted in the Minutes.

SIR, Diadem, Table Bay, 7th March, 1806,

I HAVE confined the subject of the letter which I had the honour of addressing you on the 4th instant, to the capture of the *Volontaire*; but as I have courted a great deal of conversation with the officers of that ship, under various pretences, tending, however, entirely to procure intelligence of the strength and probable destination of the fleet that sailed from Brest, I think it highly expedient to dispatch an officer with the result, for the information of my Lords Commissioners of the Admiralty, and a copy also to Sir Edward Pellew, for his government in India.

It appears, that on the 14th December last a fleet escaped from Brest, consisting of the following ships, which were previously formed in two divisions, and under separate admirals, though I cannot yet learn from the French whether they were totally independent of each other or not; but the English prisoners imagined that they were to be ultimately connected in some enterprise. The two divisions were in the act of parting company when the *Sirius* fell in with them; and therefore I conclude their Lordships will have been very easily apprised of the departure of this force from Europe.

One division consisted of Guns.

Le Imperiale	- - -	120	Admiral Lesiegues,
—Alexander	- - -	80	
Le Diomedé	- - -	74	

	<i>Guns.</i>
Le Jupiter - - -	74
— Braave - - -	74
— Comete - - -	44
La Felicité - - -	36
— Diligente - - -	22 (corvette)
The other division consisted of	
Le Foudroyant - - -	84 Adm. Willeaumes.
— Veteran - - -	74
— Impetueux - - -	74
— Cassart - - -	74
— Patriote - - -	74
— Eole - - -	74
La Volontaire - - -	46 taken by the Diadem.
— Valereuse - - -	36

With respect to the first-mentioned division, it is impossible for me, at present, to afford their Lordships any satisfactory account of its destination, either from my own conversation with the prisoners, or that of the very intelligent officers under my command, who have particularly exerted themselves on the occasion. When I suggested the idea of the Brazils, I was always answered, "Very possible; but we know nothing of that squadron. Admiral Willeaumez has a *carte blanche*."

With respect to the second-named squadron, whose fore-runner, *La Volontaire*, we have had the good fortune to capture, it appears, that the ships composing it are of the largest class; that they are completely manned; and have on board 1500 marine artillery, with two and three field pieces in each ship; this marine artillery, however, independent of their complement; though that may be in some degree increased, to enable them to land when occasion shall offer; for I understand the *Foudroyant*, which ship mounted 92 guns, has more than 800 on board, the others 750.

Jerome Bonaparte is Captain of the *Veteran*, with, it is said, a higher commission in his possession; but whether it is to be opened on a given day at a fixed place, or on the successful issue of his operations, I cannot presume to determine.

*La Volontaire* was ordered to receive on board all the English troops which had been taken in the transports.

and land them at Teneriffe, but she was prevented doing so by the falling in with an English cruiser, near the island ; she then proceeded to 24° North, and lay to three days, crossed the line in the 8° West of Paris, where she also lay to for some time, and not finding the squadron, she came directly to the Cape; and it was supposed by some of the English officers on board, that if it had not been for the sickness among their troops, she would have remained at sea some days longer ; but I cannot obtain any satisfactory reason for such a presumption, as Captain Brittell, who commanded *La Volontaire*, appeared, and naturally so, very anxious to get rid of such a number of prisoners, who rendered his ship almost useless as a cruiser ; indeed he told me, in the first half hour's conversation, that as soon as he had landed the prisoners, and procured some refreshments, it was his intention to proceed to sea in search of his admiral.

In deploring his situation, the second day after he came on board, he said to Captain King, that he feared part of his squadron must be sacrificed, for that he thought they would come in here, two at a time, to water and refresh, and that the *Veteran* would be one of the first.

Having now presented, for their Lordships, a *precis* of the intelligence which I have been able to obtain, and the movement and probable destination of these squadrons, I request you to assure them, that I shall do all in my power to make the small but zealous squadron I have the honour to command equally efficient in its concert with the army for the defence of this colony, as it was by its co-operation, in obtaining possession of it.

For this purpose, the *Raisonné*, *Diadem*, and *Diomede* will be moored as close in shore as possible, between the *Chavonne* and Amsterdam batteries, with the *Narcissus* and *Leda* a little to the eastward of the southernmost ships ; their Lordships will observe, that this is a position completely defensive, and very much at variance with the one I took up when I only expected the arrival of Admiral Linois with his squadron.

On contemplating on this preceding statement of facts, their Lordships will, I hope, be satisfied that I have fair and rational grounds for expecting Admiral Willeaumez here

with six sail of the line and two frigates; that from the observations and conclusions of the English officers who were prisoners in the *Volontaire*, it is a possible case that, for some ulterior operations, Admiral Lesiegues may join the first division in this bay; and I have, in transmitting the intercepted correspondence of Admiral Linois to the Minister of Marine at Paris, and to General Jansens the late Governor of the Cape, furnished their Lordships with the most unequivocal proofs of the Admiral's intention to revisit that colony in the course of the present month:—therefore, taking together the force which is positively expected—that which most probably will come—and that whose arrival is but a possible case—it will amount to twelve sail of the line, four frigates, and a corvette.

While we are in the expectation of a force so superior, I trust their Lordships will approve of my remaining here with the squadron as long as the season will allow me to do so; but not losing sight of the expediency of being ready to go to sea at a moment's warning, in case we should receive any certain intelligence that the enemy has been dispersed by a gale of wind. In short, at a juncture so peculiar as the present, all the means which I can command shall be held ready to apply in such a manner as may be deemed the most advantageous for the public service.

I hope their Lordships will not consider that the foregoing observations and conclusions result from any despondency on my part; the situation that I am placed in is certainly critical, and it is, I conceive, but a proper line of conduct to state every circumstance in its true bearings, for their Lordships' consideration and judgment.

By looking, however, to a happy concurrence of fortuitous events, these squadrons which, when connected, put on a most formidable shape, may by such contingencies as fleets are ever liable to, particularly in these tempestuous seas, be so reduced and so divided in the practical application of their force, as to make their arrival in that form more to be wished, than it could ever be dreaded in any shape, under the position which we shall immediately occupy between the batteries.

After what I have already communicated, I trust their

Lordships will justify my conduct in the detention of the *Raisonable*; but I shall send *La Volontaire* to St. Helena with as many men as I can muster without distressing the squadron, leaving it discretionary with the Governor to put the ships under her convoy, if by a small levy on each, with a detachment of King's troops which are now here on their way from India, he can make the frigate sufficiently efficient and respectable to take charge of the convoy.

I have the honour to be, Sir,

Your most obedient humble servant,

William Marsden, Esq.

HOME POPHAM.

&c. &c. &c.

SIR,

Diadem, Table Bay, 20th March, 1806.

ONE of the officers of *La Volontaire*, an *Ensign de Vaisseau*, is a German whom I had formerly met in Germany; and as he brought this circumstance to my recollection, manifesting at the same time a degree of discontent at the treatment he had experienced in the French marine, I made a plea of form in the Vice-Admiralty Court for the condemnation of the frigate to detain him on board the squadron, while I was making arrangements for the prisoners who were to be sent to Europe.

I have lost no opportunity of questioning him, from the most distant to the most direct terms, according to the temper he appeared in at the moment, and am inclined to think he is very positive that Admiral Willeaumez's squadron is not bound to the East Indies, though he declares not to know its ultimate destination: he thinks the two squadrons are to join, but without any positive reasons for giving such an opinion; and his own conjectures are, that, when they quit the Bank of Lagallar, where he supposes they are now cruising, that they will go to the Brazils, if they hear we are in possession of the Cape, and from thence proceed to the West Indies.

If this officer should be right in his first conjecture, I do not think the second an improbable one; and under that consideration I shall dispatch a vessel to Admiral Cochrane, with copies of all the letters I have written to their Lordships on the subject of the squadrons which sailed from Brest,

The advantage of early information of the enemy's motions must be so evident, under almost any circumstance, that I trust I shall be borne out in this decision by the facts which are presented to their Lordships ; and if they should view my conduct differently, that they will attribute this measure as entirely originating from an anxiety to forward the public service.

The vessel I have fixed on to go to Barbadoes is the *Jack*, a small transport brig, whose master is an active, intelligent man.

I have the honour to be, Sir,

Your most humble obedient servant,

William Marsden, Esq.

HOME POPHAM.

&c. &c. &c.

(Copy)

Table Bay, 13th April, 1806.

HAVING found it expedient to proceed on an expedition to the Rio de la Plata, with the squadron under my command, you are hereby required and directed, if your arrival at this place is prior to the tenth of May, 1806, to make all possible dispatch to join me at Monte Video, after having re-victualled and watered your ship, provided your orders are general, to put yourself under my command, and that you are not ordered by the Lords Commissioners of the Admiralty, or by whom you may have been dispatched to this port, on any other particular service. But in the event of your arrival being subsequent to the 10th of May, you are to exercise your judgment as to the necessity of the presence of his Majesty's ship under your command at this place : and if it shall not appear to you absolutely necessary, upon consulting his Excellency Sir David Baird, you are to join me as expeditiously as possible at Monte Video.

And if more than one of his Majesty's ships shall arrive at the Cape of Good Hope, and it does not appear to you that the service at this place requires their stay here, you are, in that case, to leave one ship here, sending the others

on to reinforce the squadron under my command in succession as they may arrive.

I have the honour to be, &c. &c.

(Signed) HOME POPHAM.

MY DEAR SIR, Admiralty-Office, 2d August, 1805.

IT has been thought expedient to detain your sailing till we hear something of the *Raisonable*, or at least till the *Diomedé* shall arrive at Portsmouth, which I hope may soon be the case, as every day's delay is important.

I have not been able to get the bomb allowed, but have inclosed directions for you to send a frigate off the east coast of America, to procure intelligence. It does not appear to be necessary to look out to the eastward, as little is to be apprehended from that quarter; and it would only create a jealousy in the commanders-in-chief in the Indian seas, whose commands extend at present to the Mauritius.

I have taken the liberty of inclosing you a letter to our late worthy Fiscal, to whom we are much indebted for his exertions and advice during the last time the settlement was in our possession, and who I am sure will still be happy to render you any assistance that may be in his power.

I am, my dear Sir, very truly, your's,

Sir H. Popham.

JOHN BARROW.

SIR, Admiralty-Office, 27th March, 1806.

I HAVE received and communicated to my Lords Commissioners of the Admiralty your letter of 13th January, inclosing a copy of one to Captain Donelly of the *Narcissus*, giving an account of his having driven on shore on the Cape and destroyed a French ship of 22 guns, supposed to have been the *Bellona*; and I have their Lordships' commands to acquaint you, that they very much approve of his conduct on the occasion.

I am, Sir,

Your most obedient humble servant,

Commodore Sir

(Signed)

WM. MARSDEN.

Home Popham.

(Received Sunday, 1st March.)

SIR, Admiralty-Office, 28th February, 1807.

I HAVE received and communicated to my Lords Commissioners of the Admiralty your letter of the 27th instant, requesting to be informed when your letters of the 9th, 13th, and 30th of April were received at the Board ;—and further requesting that all the letters which you had written to me from the time of your leaving England, up to and including your present letter, to which this is an answer, may be produced at the Court Martial. In reply thereto, I am commanded by their Lordships to acquaint you, that it appears by a note, on your letter of the 30th April, 1806, that it was received on the 24th of June following ; but it does not appear that any notes have been made on your letters of the 9th and 13th April, 1806, to shew when they came to hand ; nor does there appear to be any person in this Office capable of ascertaining the precise date of their receipt.

In regard to your request for the whole of your letters to be produced, I have their Lordships' directions to inform you, that they shall be forthcoming at the Court Martial.

Commodore  
Sir Home Popham.

I am, Sir,  
Your most humble servant,  
WM. MARSDEN.

SIR, Cape Town, May 27, 1806.

I HAVE had the honour of receiving, by his Majesty's ship *Adamant*, the duplicate of a dispatch from Lord Viscount Castlereagh, bearing date the 10th of September, 1805, and conveying to me his Majesty's commands to detach from this colony such a proportion of the troops under my command, as might be necessary for the security of the British possessions in India.

I am most happy to repeat, that general tranquillity, which now reigns in that quarter, will render it unnecessary for me to make such detachment.

I have the honour to be, &c.

Rt. Hon. Wm. Windham, &c. &c. D. BAIRD.

(Received 4th September.)



By the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c.

WHEREAS we think fit that you shall forthwith return to England, you are hereby required and directed to furnish Rear-Admiral Stirling (by whom you will receive this) with every information in which you may be possessed relative to the service on which you have been employed, as well at the Cape of Good Hope as on the coast of South America, and to the state of the country in the last-mentioned quarter; and having so done, take your passage to England accordingly, in such ship as the said Rear-Admiral shall appoint.

Given under our hands, the 28th July, 1806.

To Commodore  
Sir Home Popham.

J. MARKHAM.  
C. D. M. POLE.  
H. NEALE.

By command of their Lordships, B. TUCKER.

SIR, Admiralty-Office, 25th September, 1806.

I RECEIVED, on the 12th instant, by Capt. Donelly, and lost no time in laying before my Lords Commissioners of the Admiralty, your letter of the 6th July, acquainting me, for their Lordships' information, that the city of Buenos Ayres and its dependencies had surrendered to his Majesty's arms, after a slight resistance to the advance of his Majesty's troops under the command of Brigadier-General Beresford, and detailing the operations conducive to this object on the part of his Majesty's naval forces under your direction. In answer thereto, I have received their Lordships' commands to acquaint you, that, although they have judged it necessary to mark their disapprobation of a measure of such importance being undertaken without the sanction of his Majesty's government, and of your having left the station which it was your duty to guard without any naval defence, they are nevertheless pleased to express their entire approbation of the judicious, able, and spirited conduct manifested by yourself, the officers, seamen, and marines employed under your orders on the above occasion; and which you (or the senior officer on the spot) will communicate to them in a proper manner accordingly.

I am, Sir, Your most obedient humble Servant,  
To Commodore Sir H. Popham. WM. MARSDEN.

## EVIDENCE.

LORD MELVILLE was the first witness called, and upon his lordship being sworn, Sir Home Popham put the following question:—

“Will your lordship have the goodness to relate to the Court all the circumstances within your recollection, respecting the communications I held with Mr. Pitt and your lordship, collectively or individually, upon the subject of a proposed expedition to South America?”

LORD MELVILLE—“I feel some difficulty in answering this question. I have no doubt that I might answer such questions as can be material to the views of either party, without being called upon to make any allusion to confidential state secrets, and the question just put makes no exception.”

SIR H. POPHAM—“Nothing can be more foreign to my wish, than to call for any disclosure, at all likely to lead to such a result, as the improper publication of a state secret. No—rather let my private interest suffer, than such a consequence be even risked. In order to guard against such a thing, I propose the addition to the question of these words, which I hope will meet the approbation of the Court, and obviate the objections of the noble lord, namely, ‘provided they do not interfere with any state secret.’”

Those words being added to the question, the noble lord returned the following answer:

“Soon after I came to the head of the Board of Admiralty, I had occasion to learn that the administration, preceding that of which I formed

a part, had communications with General Miranda respecting some projects he entertained relative to South America. I did not immediately give much attention to that subject; because, not being then at war with Spain, it did not occur to me how, consistently with that situation, the government of this country could take any active part in the business. In the progress of the summer of 1804, and particularly towards the autumn of that year, I had little doubt in my own mind, from the official information I had occasion to receive at the Board of Admiralty, and from communications with the heads of other public departments, that such war must soon take place; I therefore thought it my duty, through Sir Evan Nepean, Sir Home Popham, and others, who, I had reason to think, were acquainted with what had passed under former administrations, to inform myself more minutely relative to the views and projects of General Miranda: I likewise had more than once confidential conversations with General Miranda himself: the result was, an opinion, that, although it might not be wise or expedient, nor perhaps within the means of the country at that time, to commit themselves fully to the extent of his projects, it was of the utmost importance to this country so far to watch the progress of his operations, as to make use of them if they could be made subservient to the purpose of opening the South American market to the trade and manufactures of this country; and upon that principle, I had, as upon every other public subject, almost daily communication, both in town and at Wimbledon, with Mr. Pitt, then at the head of the government, with which I was connected. The subject was the more familiar to my consideration, because for many

years past, particularly in the year 1796, I had occasion to consider it very maturely, with a view of preparing, in concert with the then Board of Admiralty, operations against South America upon a very extensive scale. I was at that time Secretary of State for the War Department. In consequence of the conversations I had with Mr. Pitt, as already mentioned, toward, I think, about the month of October or November, 1804 (it was nearly about the time the war broke out about the capture of the four Spanish frigates), I desired Sir Home Popham to attend me, in order that he might be at hand to attend Mr. Pitt and myself at any time we might have occasion to talk with him."

Sir HOME then presented the noble lord a letter, in order to assist his memory.

"I see," said the witness, "the letter is dated the 1st Dec. 1804." [His lordship read the letter of that date, as follows:]

*Letter from Lord MELVILLE to Sir HOME POPHAM, dated Wimbledon, Dec. 1, 1804.*

DEAR SIR HOME,

GENERAL Miranda is not more importunate with you than he is with me: but he unfortunately supposes us at war with Spain; we are not so, nor have we heard a word from Mr. Frere, even of his having left Madrid. The negotiation may be therefore still going on; and the same difficulties subsist with regard to the operations suggested by General Miranda, which have subsisted for so long time past. We must hear soon, and if we do not within a day or two, I still think I shall send for you to come upon leave of absence. I have been looking about, but I do not find any thing more ready than the Diadem, in which I can place you; and it will be a few days before even she is commissioned.

(Signed)

MELVILLE.

" Some time after that, Sir Home Popham came to town, and I had many conversations with him, in consequence of the various conversations I had from day to day had on the subject with Mr. Pitt, and these conversations continued during the remaining period I continued at the Admiralty. I ceased to be in that situation immediately after the 8th of April, 1805. I had many interviews with Mr. Pitt after that period, and indeed during the whole period of his life, till our final separation at Bath, the beginning of the year 1806. But from the time I ceased to be his colleague in office, I made it an invariable rule to avoid all conversation with him upon subjects of a public or confidential nature, so that from my own knowledge I can speak to nothing after the 8th of April, 1805."

Q. Does your lordship recollect directing me to attend Mr. Pitt at Wimbledon, some time in the month of October 1804, when there was nobody present but your lordship and Mr. Pitt, and that I remained the whole evening explaining all General Miranda's views, and discussing the objects to which he was anxious to call the attention of this country?

A. I remember perfectly well such interview taking place, but I cannot charge my memory with the precise month; it was in 1804.

Q. Was it on the day of the night that Mr. Pitt went down to Weymouth to the King?

A. I think it was—I think it was very likely to be on that night, as he went from my house.

Q. Does your lordship recollect desiring me to send for General Miranda—after conversing with him upon every subject relative to South America, to draw up a specific memorial on that subject, and to explain, to the best of my judgment, the readiest way of embracing all the views which General Miranda had from time to time submitted to the government, either through me or by himself?

A. I recollect perfectly having received such a memoir, being very glad to know the full extent of General Miranda's views; but certainly avoiding to commit myself or the British government in them beyond the object I have already stated; I mean the market

of South America, upon which subject I have certainly entertained a most anxious wish almost from the time I had occasion to take the public concerns under my more immediate consideration, and that anxiety has certainly never diminished, but much increased in consequence of all the events which for some years past have taken place in the East Indies, the West Indies, and, above all, upon the continent of Europe.

Q. In consequence of your lordship's great pressure of business, it is possible you may not recollect all the circumstances relating to this object so well as myself, who had nothing else to attend to; but you may possibly recollect having desired me to draw up the memoir in question?

A. I certainly employed you so to do, and I thought I had so expressed myself before.

Q. Does your lordship recollect that when you did me the honour to appoint me to the Diadem, it was for the sole purpose of carrying into execution, either some part, or the whole of the plan submitted to your consideration in the above recited memorial?

A. I do recollect that when Sir Home Popham was appointed to the Diadem, the object then immediately in view, was to co-operate either with or without General Miranda, in such objects mentioned in the memorial as might be thought conducive to the interests of Great Britain.

Q. Does your lordship recollect, while you were at the Admiralty, whether the intention of employing me on this subject was so far advanced, as to bring under your contemplation the part on which I was positively to be employed, and the limited discretion to pursue, if successful, the first object, or to follow whatever other might appear to me most salutary in advancing the general view of opening the markets of South America to the active enterprise of our merchants?

A. I know certainly the great object was the South American market, but I cannot speak to any further details at that time, as the business was then not so far advanced as to be the subject of detailed instructions, which might have fixed the particulars more in

my memory. It occurs to me at this moment as not improbable, that the coast of South America, in the vicinity of Trinidad, was at one time looked upon as a probable scene of operations.

Q. Upon hearing of the capture of Buenos Ayres, did your lordship consider it as an acquisition materially advancing the great object which Mr. Pitt and your lordship had in view with respect to South America?

Mr. JERVIS objected to this question, as meaning to draw from the noble lord his opinion as to the value of the acquisition to which it referred, and which opinion was not legally admissible in evidence.

Sir HOME POPHAM submitted to the Court, whether it was not perfectly relevant to apply to the noble lord for his opinion upon this point, as it would serve to shew, that in the course he had taken, his object was to follow the original plan which Mr. Pitt and the witness had in view for attacking South America.

Admiral STANHOPE conceived the question perfectly correct and relevant to the case before the Court, as the object of it was to ascertain the sentiments entertained by the witness at the time he was First Lord of the Admiralty, and also by Mr. Pitt, in conformity with the wishes of both, of whom the honourable captain professed to act in his expedition to Buenos Ayres.

The Court concurred in this opinion; and

Mr. JERVIS said, that it was sufficient for him that the Court disapproved of his objection, to induce him to relinquish it.

The PRESIDENT expressed a wish that the prisoner should confine his examination to the subject of the charge.

Sir HOME POPHAM—"I hope I have not as yet travelled out of that line: recollecting the

injunction of this Court, and also consulting my own interest, it is my resolution to adhere to it."

A. No doubt Buenos Ayres appeared to me as highly beneficial for the object I have already mentioned to be in view ; but I am by no means sure if I may not have taken that impression from the circumstance of Buenos Ayres having been one of the specific objects in view, when the armament was in contemplation, in 1796.

Q. Can your lordship speak to the fact of my having been confidentially employed on various objects, both in the late and present war, by some of the members of the cabinet, particularly by your lordship and Lord Grenville?

A. I certainly know that Sir Home Popham was confidentially employed by different members of the cabinet at the times he alludes to.

Q. Is it in your lordship's recollection, that in the execution of those various confidential services, circumstances arose, which were not at the moment of writing my instructions provided for, nor indeed could they be; that I, under those circumstances, exercised a very enlarged discretion, to obtain the great object for which I was so employed? I particularly allude to one of my missions to the Court of St. Petersburg.

Mr. JERVIS objected to the question, because the honourable captain sought to infer, from the enlarged discretion allowed him upon other occasions, that he was competent to take a similar latitude upon that before the Court.

Sir HOME POPHAM—"I have endeavoured to put this question in the least exceptionable shape that I could devise. My object is to shew the nature of the confidence with which I was honoured by the government under whom I acted; and that I was competent to exercise a certain degree of discretion, without any fear of censure from that government. It will be for the Court to determine how far I was warranted by these



circumstances in the alledged deviation from my original instructions.

**PRESIDENT**—"The discretion with which the prisoner may have been invested upon other occasions, has no connection with the discretion he has exercised upon the occasion alluded to in this charge. Unless he can shew that it is lawful for officers to exercise similar discretion to that which he has thought proper to follow, in a case of this nature his allusions cannot avail him.

**Sir HOME POPHAM**—"I presume it will be allowed, that if an officer has found himself relied upon in his general conduct, that he may, without censure, think himself at liberty to exercise a liberal discretion in a particular instance?

**Mr. JERVIS** observed, that if such precedents were insisted upon, it would be warrantable for him to enter into an investigation of the nature of these precedents.

**The JUDGE ADVOCATE** thought this question ought to be waved.

**Sir HOME POPHAM**—"Probably the necessity of pressing this question may be obviated by a reference to the letter from Lord Howick's office, which I received after the commencement of this Court-martial\*.

**Lord MELVILLE**—"Really, I again wish to state, that I am extremely embarrassed upon this subject, lest I should be led to disclose confidential matters, which should not be made public.

**The PRESIDENT** did not conceive it necessary to give any answer at all tending to such a consequence.

\* See the 5th Day.

Admiral HOLLOWAY did not think that any questions tending to shew that, of which no one could have doubt, namely, that the conduct of Sir Home Popham, in any case upon which he was employed, was satisfactory to the witness and the administration of which he formed a part, could be relevant to the subject of the present charge.

Sir RICHARD STRACHAN could not conceive the question applicable, unless the Court should enter into an investigation of all the cases in which confidence had been reposed.

Admiral COFFIN coincided with his honourable friend who spoke last.

Admiral ROWLEY thought it quite just to allow the prisoner to shew the amount of confidence reposed in him, and the use he made of such confidence, in order to enable the Court to determine how far he was right in assuming a certain degree of discretionary power.

The JUDGE ADVOCATE was of opinion, that an answer to the question under discussion must necessarily lead to another, in order to institute a comparison between the case referred to in the answer, and that which formed the subject of the present charge.

A. I am ready to allow that Sir Home Popham has been employed on many confidential occasions, and met with the approbation of government in the execution of them; but I trust I shall not be called upon for an explanation of any particulars.

Mr. JERVIS—Q. Does your lordship recollect at what time it was that Sir Home Popham was appointed to the Diadem?

A. I can't recollect the precise time, except from the letter of the 4th Dec. 1804; it must have been in the month of Dec. 1804.

Q. Does your lordship recollect whether the nego-

ciations that were going on with the court of Spain for an amicable adjustment of the differences between her and this country, had or had not terminated unsuccessfully before that time?

A. I can't from memory fix the precise time, but I make no doubt it was a short time after the date of this letter, as I remember the account came recently before the meeting of Parliament.

Q. Was Sir Home Popham appointed by your lordship to the Diadem, with the view of carrying on offensive operations against Spanish South America, and what part of it in particular?

A. I believe Sir Home Popham was appointed to the command of that ship, with a view of co-operating with General Miranda, to the extent of taking advantage of any of his proceedings, which might lead to our obtaining a position on the continent of South America, favourable to the trade of this country; but I do not recollect any specific place being fixed on.

Q. Your lordship has said that you had many confidential communications with General Miranda on the subject of his views, and that the result of those conversations, was an opinion, that although it might not be wise or expedient, nor perhaps within the means of this country at that time, to commit themselves fully to the extent of his projects, it was of the utmost importance to the interests of this country, so far to watch the progress of his operations, as to make use of them if they could be made subservient to the purpose of opening the South American market to the trade and manufactures of this country—was that the object your lordship had in view when you appointed Sir Home Popham to the Diadem, and did your lordship continue to entertain the same objects and to the same extent, only during the remainder of the time that your lordship presided at the Admiralty?

A. It was with the view mentioned in the question, that I appointed Sir Home Popham to the Diadem; and I do not recollect, that during the period afterwards when I remained at the Admiralty, government had in contemplation any plan upon a more extensive footing.

Q. Was Sir Home Popham appointed by your

lordship to any command authorizing him to attack any part of South America?

A. Certainly not, in the proper sense of those words.

Q. Is there any note or official document in the records of the Admiralty, to your lordship's recollection, stating the object for which Sir Home Popham was appointed to the Diadem?

A. I cannot speak with absolute certainty, but I should think there is not.

Q. Your lordship has said that Buenos Ayres was one of the specific objects in view when the armament was in contemplation in 1796:—had your lordship that object in view at any time since the breaking out of the present Spanish war, up to the time your lordship retired from office?

A. At all times and in every conversation that I had with Mr. Pitt on the subject, I make no doubt Buenos Ayres was often the subject of discussion. My reason for being confident in that opinion is, that in all the considerations I ever gave to the subject of South America, whether the attack was to be made upon a smaller or a larger scale, I always considered the Rio de la Plata as the most important position for the interest of Great Britain upon that side of South America.

Q. I would take the liberty of asking your lordship, whether with those opinions it was determined on by his Majesty's then ministers to make any attack on Buenos Ayres, and whether Sir Home Popham was appointed to any command for that purpose?

A. I do not believe that his Majesty's government collectively, had ever come to any resolution of making an attack on South America; and it will be recollected that I have already stated, that it was only for a few months after the beginning of the year 1805 that I remained in the government\*.

The PRESIDENT—Q. When Sir Home Popham was employed by his Majesty's ministers, and having used

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\* It is known what degree of influence Mr. Pitt and Lord Melville had over his Majesty's government at the time. If an officer acted under such influence, can he be deemed culpable?

his discretion, and his conduct was approved of, was he employed as a captain in his Majesty's navy, or on services of a nature distinct and different from the naval service?

A. Chiefly upon those of the latter description. A circumstance in the Red Sea might be an exception.

Sir HOME POPHAM—Q. Was it customary to enter a minute at the Board of Admiralty when an officer was selected by the cabinet, or the leading members of it, to make the necessary arrangements for a secret service, which was afterwards to be submitted to their consideration?

A. Certainly not, to the best of my recollection.

Q. Is there any service in which an officer requires more discretion, the grant of such discretion has more power, or when been productive of more glorious and beneficial results to the country, than when he commands a squadron when on a foreign and distant station?

The Court could not allow this question to be put, and Sir Home Popham bowed to their will.

WILLIAM STURGES BOURNE, Esq. called in, and sworn.

The PRESIDENT—Q. Is it possible, Mr. Bourne, that from the situation you held, you should be acquainted with the secrets of government?

A. I am not aware of the extent of that question.

Sir HOME POPHAM—Were you one of the Secretaries of the Treasury in the month of July, 1805?

A. I was.

Q. Did I communicate to you at any time during that month, some confidential information which I had received relative to the Cape of Good Hope?

A. I remember your making some such confidential communication, and I believe it might be in the month of July, 1805.

Q. Can you state to the court for what purpose I made that confidential communication to you?

A. The communication was made to me for the purpose of conveying it to Mr. Pitt.

Q. What was done by you in consequence of it?

A. I communicated the substance of it without loss of time to Mr. Pitt, even, I believe, while Sir Home Popham remained in my own room at the Treasury. Mr. Pitt immediately authorised me to make further enquiries on the subject in the quarter from which the communication was stated to be derived. I immediately obtained an interview with one of the gentlemen, from whom I understood the intelligence had been received, and carried him to Mr. Pitt on the following day: the result of those interviews was, a complete confirmation of the statement made by Sir Home Popham; and Mr. Pitt instantly determined to take the necessary measures for the execution of an expedition against the Cape.

Q. Do you recollect whether you received the instructions from Mr. Pitt either to get the intelligence I gave you confirmed, or to obtain some collateral proof of it, antecedent to my seeing Mr. Pitt in consequence of the original communications which you made to him?

A. Mr. Pitt, I apprehend, directed the enquiry to be made by me with a view of gaining the most precise intelligence that could be procured, and I believe, but I am not positive, that it must have been antecedent to his seeing Sir Home Popham on this subject. Upon being reminded of it, I think I went down to Mr. Pitt, and returned to Sir Home Popham in my room, and accompanied him to Mr. Pitt: the names of the gentlemen from whom the information was derived were stated by Sir Home Popham, and I believe he did accompany me to a house in Pall Mall, where one of them he thought might be found.

Q. Were you present at my conversation with Mr. Pitt on the subject of the Cape of Good Hope?

A. I certainly was.

Q. Can you state to your own knowledge whether any expedition to the Cape was in contemplation at the moment I proposed the one in question to Mr. Pitt?

A. I am quite sure that Mr. Pitt had no such expedition in his contemplation at the time Sir Home Popham made this proposal, and I have no reason to

believe that any other of the King's ministers had such an object in view.

Q. Do you recollect the confidence Mr. Pitt reposed in me, and my taking the liberty, which I did in consequence of the confidence I thought Mr. Pitt reposed in me, when he expressed a doubt of what military officer should command the expedition, of submitting the name of one for his consideration?

A. I have a faint recollection of it; but it is not sufficiently strong to enable me to speak positively on the subject.

Q. Do you think from the best of your recollection, or from any circumstances you may have heard afterwards from Mr. Pitt, that it was the officer who did command the expedition?

A. I have a strong impression on my mind that Sir Home Popham was anxious that Sir David Baird should command the army.

The COURT—Q. In the conversations at which you were present between Mr. Pitt and Sir Home Popham, was it determined or proposed to attack the Spanish settlements in South America after the attack on the Cape, in the event of that attack proving successful?

A. I recollect no proposal being made in that conversation respecting the Spanish settlements in South America. I certainly have at another time heard Mr. Pitt state his views with respect to South America.

WILLIAM HUSKISSON, Esq. called in, and sworn.

Sir HOME POPHAM—Q. Were you one of the Secretaries of the Treasury in the month of July, 1805?

A. I was.

Q. Do you recollect my taking leave of Mr. Pitt in your room at the Treasury, on or about the 29th of July, 1805, previous to my sailing for the attack of the Cape of Good Hope?

A. I have no precise recollection of the date, but I recollect going into my room at the Treasury, and finding Mr. Pitt and Sir Home Popham there together. I can't say I particularly recollect any taking leave.

Q. Do you recollect my telling you Mr. Pitt had desired I would give you the names of some gentlemen who were likely to furnish him with any further information upon the subject of South America?

A. I recollect generally that frequent conversations passed between Mr. Pitt and myself, in which he expressed an anxiety to obtain every possible information respecting South America, and in which he conveyed to me his desire that I would take every opportunity of procuring him such information, and collect and keep together such as might be procured: but I do not specifically recollect the precise conversation that took place on your taking leave; but I have by Mr. Pitt's desire, more than once, conversed with Sir Home Popham on the subject of such information.

Q. Was the impression at all on your mind that I, at the time alluded to, either from what I said to you, or from what afterwards occurred, had at that time conversation with Mr. Pitt on the subject of South America?

Mr. JERVIS objected to the question as illegal.

Sir Home POPHAM—"I really cannot understand distinctly what the learned prosecutor means by what he calls illegal evidence. This is the best evidence I can offer from the peculiar circumstances in which I am placed. Unfortunately for me and for the country, Mr. Pitt is no more, and I am therefore under the necessity of seeking that from others which I could prove by himself were he alive; but in the absence of that testimony I now adduce one of his most confidential friends in order to shew the wish of that illustrious man. This is the best evidence the nature of the case admits of; but I must submit to the will of the Court. If, however, you will allow me to proceed in this interrogatory, I think I shall be able to shew you more fully the views of Mr. Pitt with regard to the expedition, which is the subject of the charge before you, and also how far I was authorised in acting upon those views from the communications I had received.



**Q.** Had you any conversation with Mr. Pitt in the course of the year 1805, respecting South America, and particularly Buenos Ayres? and did you by his desire take any steps respecting the settlement?

**A.** I have already stated that I had conversation with Mr. Pitt on the subject of South America, and I might add, particularly Buenos Ayres; and I did take certain steps by his desire respecting Buenos Ayres.

**Q.** Will you have the goodness to state the nature of those conversations generally, and the steps you took? but I do not wish to exact any disclosure that would either affect the interest of the state or individuals, however the result of such disclosure might be of essential service to me in my situation.

**A.** I believe almost every occasion that Mr. Pitt conversed with me on the subject of South America, grew out of some incident or occurrence that called his attention to that part of the world particularly. I see, among other instances, that a person brought to me a plan or engraved chart of the Rio de la Plata, which I now hold in my hand, and which had been, as he recently informed me, published at Paris, being taken from the *dépôt* of the King of Spain, at Madrid; and he added, that he had intelligence which induced him to believe that that plan might shortly be of use to some part of the French navy, who would probably find their way to that settlement: knowing, as I did, that the person who gave me this information was one in whom Mr. Pitt was disposed to place reliance, I of course felt it my duty to communicate to him the plan, and what he had stated to me on this occasion in former conversations that had passed between us. Mr. Pitt stated to me generally, as he had frequently stated before, the views he entertained with respect to South America; that he conceived it a most essential object for this country to use its naval superiority, and the facility that superiority afforded, in extensive operations against South America, in case we should be obliged to continue the war, as he apprehended we should if the success of the confederacy than forming on the continent did not correspond with his wishes on that subject; that he thought his plan of operations most essential, not only to the interests of this

country separately considered, but also with a view to prevent the French themselves from doing that which he did not doubt they would do in case of any neglect; namely, the getting possession of the principal positions and avenues to that extensive empire; that he therefore gave general credit to the person who furnished that plan and the information, but hoped we should be beforehand with the enemy, as our naval means were so much superior to theirs. With respect to the steps taken, I feel a delicacy in stating them, as the safety of some individuals may be endangered: I can only state very generally, that by Mr. Pitt's desire, I did take measures for procuring further intelligence, respecting the state of Buenos Ayres up to the latest possible period; and that a series of questions, one of which went to the very point whether any French force had arrived, or was immediately expected there, was put through such a channel as was likely to furnish a satisfactory answer to such questions, and also to take preliminary steps upon the spot at Buenos Ayres, with a view to facilitate its capture by any British officer: these steps were taken very soon after this information was given, as Mr. Pitt expressed considerable anxiety that nothing should be left unprepared or undone to frustrate what he supposed to be the intentions of the enemy, and to accomplish his own at that settlement. I should only add, that Mr. Pitt mentioned in his conversation Sir Home Popham as a person with whom he had conversed, and who had given him information respecting these subjects.

Q. Were the views which Mr. Pitt had in forming the confederacy on the continent, answered?

A. I certainly conceive not.

Q. Do you know of any political objection existing at the time I sailed to the Cape of Good Hope to prevent my having received some instructions, direct or provisional, on the subject of Mr. Pitt's views towards South America?

Mr. JERVIS objected to the question as quite irrelevant.

Sir HOME POPHAM submitted that this question was peculiarly applicable to one of the

strongest parts of his defence. There were two views in which questions of this nature were to be considered, the one as to law, the other as to equity; and these views were not only distinct, but unfortunately, in too many instances directly opposite: although the one professed to take the latter for its basis; but probably this distinction or opposition was more owing to the quibbling or perplexed difficulties of lawyers than to the original structure of the law. If the learned prosecutor would ground his objections upon the principles of justice, it would not only be more candid towards the prisoner, but more intelligible, who could not be supposed to have any particular knowledge of the technical terms or professional calling of the bar; indeed this was but mere jargon in that court, and perhaps of but little utility any where. When the learned prosecutor talked of law in that honourable court, not being in general intelligible in his mode of argument, he could hardly hope to produce any impression, unless he flattered himself that his *dictum* was to have the force of authority, in which fancy he had no doubt, the learned prosecutor would find himself disappointed.

The COURT overruled the objection, and pronounced the question perfectly relevant and proper.

A. I can state that Mr. Pitt stated to me in conversation, a political objection which had a certain weight with him at that time for not undertaking the immediate operations against South America; but I cannot positively take upon me to say, whether in case that objection had not existed, Sir Home Popham would then have received instructions to proceed to that part of the world or not.

Q. Was that political objection removed by the

complete failure of the views which Mr. Pitt had in forming the confederacy on the continent?

A. I conceive it was.

Q. I think you stated that Mr. Pitt desired you to take some preliminary steps with respect to Buenos Ayres, as in the event of failing in his views on the continent, and the continuation of the war, it would be of great importance to commence some operations in South America, and still greater to anticipate the supposed views of the French towards that country?

A. That is certainly the substance of what I stated.

Q. Do you know of any circumstance that happened which occasioned him to change his views, as to the value he set on the possession of South America for the purpose of introducing British manufactures into that country?

A. I believe his views with respect to South America were by no means confined to the mere objects mentioned, of introducing British manufactures; but I have no reason to believe that any of his views with respect to that part of the world, at all were changed.

Q. Do you think that his views with regard to South America, were materially strengthened by the extraordinary and rapid successes of the enemy upon the continent, and the shutting of so many of the continental ports against our trade.

A. I believe they were.

Q. Do you not know, from conversations with Mr. Pitt, previous to the failure of the then continental alliance, that it was his hope and expectation that he should be able to detach Spain from her alliance with France; and was not that the political consideration which he stated as having weight with him not to undertake immediate operations against Spanish America\*?

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\* Sir Home Popham had it in his power to state some facts as to this point, which would here operate more powerfully in his defence, but which from public motives he was induced to suppress. Was it wise in the prosecutor to extort an answer from the witness that gives publicity to an expectation entertained by the British minister, which expectation, *prima facie*, implies the existence of some clandestine negotiation with the Spanish government, and must serve to excite a suspicion in the mind of Bonaparte as to the fidelity of that government towards France? Could not the understanding of Mr. Jervis reach far enough to see these consequences? and why press a question in no degree material to his side of the case?—EDITOR.

A. I certainly can state what Mr. Pitt's views, in these conversations, were on this subject: he was personally very far from entertaining any sanguine hope or expectation that Spain would be detached from her alliance with France; but one of the principal powers of the confederacy then forming, entertaining a different expectation, he acted in deference to her wishes rather than to his own expectation on the subject, from a wish to conciliate that power—and that was the political objection I alluded to.

Q. I need scarcely ask you whether Mr. Pitt, having that political objection against making an immediate attack on Spanish South America, did at any time communicate to you that Sir Home Popham had either a positive or a provisional order to attack Buenos Ayres after his attack of the Cape, in the event of his success in that enterprise?

Sir HOME POPHAM—"I never asserted or insinuated any such thing, and therefore I feel astonishment at the question. What can the learned prosecutor have in view, in seeking for the negative of that which I have never affirmed or pretended?"

Mr. JERVIS—I think the question relevant, and therefore I shall put it.

Sir HOME POPHAM—"But I stated nothing in my defence which can render such a question necessary, and how, therefore, can it be pertinent?"

Mr. JERVIS—"It is no matter to me what you stated in your defence; it is my wish to put the question."

Sir HOME POPHAM, in a strain of happy irony, complemented the argumentative powers and legal knowledge, but, above all, *the refined politeness, which the learned prosecutor had manifested in the course of this trial, and particularly in his last remark.*

After some deliberation among the members

of the Court, the question was allowed to be put.

A. I certainly never understood from Mr. Pitt, that Sir Home Popham had such positive or provisional instructions.

Q. Did you take any further step respecting Buenos Ayres, than by means of enquiry from individuals?

A. I did.

Q. Were any measures to your knowledge taken in concert with the Secretary at War, or the First Lord of the Admiralty, in consequence of these enquiries?

A. Certainly, measures were taken, but it is quite impossible for me to state what precise steps were adopted.

Q. Was any force provided either in the War Department or the Admiralty, or applied for, for the purpose of an expedition against Buenos Ayres, in consequence of the information obtained?

A. I can only state an opinion upon that: I do not know from any conversations with Mr. Pitt, that any force was applied for, or provided for that specific object.

Q. Do you not know, from conversations with Mr. Pitt, that he had not the attack of Buenos Ayres in contemplation, after the attack on the Cape of Good Hope, with the event of that enterprise being successful?

A. From my conversations with Mr. Pitt, I did not understand that any attack on Buenos Ayres was in his immediate contemplation at the precise time Sir Home Popham sailed for the Cape of Good Hope.

The PRESIDENT—Q. After the removal of the political objection before alluded to, was any force prepared or sent for the purpose of an attack on Buenos Ayres?

A. I conceive that the political objection was not completely removed until the defeat of the Russian army at Austerlitz. That event took place on the 3d of December, 1805; and when the intelligence of it and its consequences was received in this country, the state of Mr. Pitt's health was such as to prevent his attend-

ing to the concerns of the state, or to allow my having any conversation with him upon that or any other subject.

Sir HOME POPHAM—Q. Was any preliminary step taken for the prosecution of an attack on Buenos Ayres, in which the Admiralty was at all accessory?

A. A step was taken with a view to prepare and facilitate the execution of any attempt that might be made upon Buenos Ayres, to which by their signature the Lords of the Admiralty were accessory.

The PROSECUTOR—Q. When?

A. I cannot recollect the precise time. It was in the summer of 1805.

The COURT—Q. Was the plan delivered to you previous or subsequent to the sailing of Sir Home Popham?

A. I cannot precisely say, I believe after\*.

The Court adjourned until nine o'clock the next morning.

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#### FOURTH DAY.

*Thursday, March 10, 1807.*

Upon opening the Court, which had been previously engaged for some time in deliberation, during which strangers were excluded, the PRESIDENT addressed Sir HOME POPHAM in the following terms:

“ I think, Sir, you will feel that this Court listened to you yesterday with patient attention, while many papers were read, and interrogations put, which were wholly irrelevant to the question immediately before them. They did so from the consideration of what you stated in your

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\* From this it is manifest that even after the sailing of Sir Home Popham—that almost up to the last moment of his existence, Mr. Pitt was pursuing the means necessary to the attainment of his favourite object in South America.—EDITOR.

defence to be necessary, in order to remove prejudices which you apprehended to have gone abroad. With such prejudices this Court has of course nothing whatever to do, and having attended to your wishes in the manner I have already stated, they trust you will, during the remainder of this trial, endeavour to avoid embarrassing our consideration, or protracting the course of our proceeding, by the introduction of any extraneous matter, and that you will confine yourself to the points necessary for your defence against the charge now under our consideration."

Sir HOME PORHAM—"I shall most anxiously endeavour to comply with the wishes of this Honourable Court, and I beg to present my thanks for the indulgent attention I have experienced. At the same time, I hope I may be allowed to observe, that although upon first view, some questions which I have taken the liberty of submitting might appear irrevelant, yet they in all instances, were intended, and did appear to me, to lead to other questions immediately bearing upon the charge against me. I hope the Court will do me the justice to believe, that it is my wish to adhere to that which is obviously my interest, namely, to the production of those points only which are likely to operate in my defence."—The honourable captain concluded with expressing his hope that, "if, in the situation in which he stood, an anxious feeling of solicitude for the vindication of his professional character and his private honour had insensibly led him to trespass at any improper length upon their indulgence, or to trouble them with any portion of evidence not quite relevant, they would not impute his conduct to any improper intention. Some parts of the evidence he had ventured to introduce might



seem irrelevant when separately considered, but when taken collectively, would, he rather thought, be found to amount to a species of proof, which, he believed, was not unfrequently adduced on trials of this kind, as well as on those in the ordinary Courts of Civil and Criminal Judicature. He pledged himself, however, not intentionally to incur the displeasure of the Court again in any respect."

SIR HOME POPHAM—Q. How long have you held any official situation under the Board of Admiralty?

A. Upwards of twelve years.

Q. In the long official experience that you have had as Chief Secretary to that Board, I ask you, whether you can state to the Court, whether, in the trials of Admiral Byng, Lord Keppel, Sir H. Palliser, or the more recent ones of Sir J. Duckworth and Sir Robert Calder, the charge against those officers was worded in the same manner as that which has given rise to the present Court-Martial; I mean, Sir, whether the orders for holding the Courts-Martial in question, inculpated the prisoner, and, by implication, called upon such Courts to punish the person to be tried, by inserting in those orders words to the following effect: 'Whereas a due regard for the good of his Majesty's service imperiously demands, *that so flagrant a breach of public duty should not pass unpunished\** ?'

The PRESIDENT—"I beg to know what we have to do with that? The Admiralty have the authority to word the charge as they please, according to their sense of the offence by which the trial is called for.

Admiral ROWLEY could not see how the

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\* It is rather a singular coincidence, that the words marked in Italics are *precisely* those in which Lord Howick described the offence of Sir Home Popham, when in December last, that noble lord thought proper, in the House of Commons, to prejudge the case of this officer.—EDITOR.

question could bear upon the case under consideration. The Admiralty was not to be arraigned for wording the charge as it thought proper. The wording of charges was the business of the Admiralty. Having been on 30 courts-martial, he could say that they were very often differently worded.

Admirals VASHION, COFFIN, and Sir RICHARD STRACHAN expressed their unwillingness to hear the Admiralty arraigned, as did the JUDGE ADVOCATE, who observed, that arraigning the conduct of the Admiralty was not the way for the prisoner to adopt in defending himself.

Admiral STANHOPE wished to know the object of the question.

Sir HOME POPHAM stated his wish to remove, or to guard against the operation of every prejudice excited against him; and to shew the means resorted to, in order to originate and set these prejudices in motion. The charge, he observed, had been published in the newspapers. He apologized for having been betrayed into any question disagreeable to the feelings of the Court. He would be unwilling to obtrude any thing of that nature, however necessary he might conceive it to the justice of his case. His object in putting the question disapproved of, was to shew the *animus* from which this prosecution proceeded, and that a degree of severity and harshness had been manifested, which was quite unusual towards officers in similar situations. It would be recollected that in some of the instances to which his question referred, the charges, were of the highest nature, and in one the punishment capital.

Admiral STANHOPE assured Sir Home that such prejudices had no influence on his mind:

and, from what he knew of the Members of that Court, he thought he could speak for them also.

After a few more observations from the President, Sir Home Popham's question was waved.

Q. Was Admiral Stirling directed to evacuate the River de la Plata?

Mr. JERVIS presented a paper to witness.

A. I am asked whether the orders issued by me to Admiral Stirling were to that purpose. Having no notice of any questions to be asked before I left town, I cannot answer from recollection: I suppose I am not allowed to answer from the paper in my hand; I cannot conscientiously swear to the identity of this paper; but my answer is, I do not recollect.

Q. Do you recollect that any force, as a stationary force for the Cape, was sent there after the receipt of my letter of the 9th of April, 1806, stating the arrangement I had made for going on the east coast of South America, with the squadron under my command?

A. The Sampson, I think, was sent as a ship intended for the Cape of Good Hope station; and I believe that shortly after Sir Thomas Trowbridge was ordered thither from the East Indies.

Q. When did the Sampson leave England?

A. I do not recollect the precise date.

Q. Was the Sampson ordered to call at Rio de la Plata?

A. I think she was.

Q. Could you then consider her as a ship ordered directly to the Cape of Good Hope, for the immediate protection of it?

A. Not directly.

Q. Do you recollect when I was employed in Russia, that I had several commands in the navy put under my orders?

A. I do not recollect the fact, though I have no reason to doubt it.

Q. Have you brought down the sentence of the court-martial upon the trial of Captain Thompson?

Judge ADVOCATE—"The judgment of this Court cannot be bound by the precedents of any former Court."

Sir HOME POPHAM—"I apprehend with great deference, that nothing is more usual in all Courts than to refer to a former decision upon an analogous case; not in order absolutely to adopt that decision, but to derive any information from it, it may be capable of affording. I do not of course mean to refer to the case of Captain Thompson with any view to an opinion that this Court is to be governed by any former precedent, but merely from the consideration I have already expressed, or at least to shew that I have not acted without precedent."

Admirals COFFIN and ROWLEY concurred with the Judge Advocate, and were adverse to the idea of submitting the judgment of the Court to such rules.

Sir HOME POPHAM—"I do not presume to offer precedent as a rule to determine the opinion of this honourable Court, but merely to shew that I have been guided by precedent, which I hope is justifiable in an officer,—which I know is a habit in the service, and that my conduct has not been of the singular character ascribed to it elsewhere."

The question was not pressed.

Sir ISAAC COFFIN—Q. Do you know the nature of the service on which Sir Home Popham was then employed? was it of a military nature, and subject to military discipline?

A. My recollection is so faint, that I cannot speak with certainty.

Sir HOME POPHAM—Q. Do you know whether the Sampson was coming home with a convoy?

A. I do not.

THOMAS WILSON, Esq. called in, and sworn.

Sir H. POPHAM—Q. I believe, Sir, you are a merchant of London, and have had considerable intercourse with the Rio de la Plata?

A. Yes, I have.

Q. Do you recollect my having had several conversations with you on that subject, in the summer of 1805?

A. Yes, I do. I think about the month of June, it was respecting the produce of the country, and the strength of the country, from what I could collect through persons I had employed there. The result was, that all the information I got from Captain Collins, Mr. Harding, and another, I made an appointment with one of them to go up to Mr. Pitt with Sir Home Popham, on his return from Portsmouth.

Q. Did you endeavour to persuade me to impress upon Mr. Pitt's mind the necessity of having a footing in South America?

A. Yes, I did myself endeavour to impress it upon the mind of Mr. Pitt, and upon that of certain members of the Board of Privy Council, the Duke of Montrose, and others. Mr. Pitt I never saw personally on the subject, as the appointment did not take place in consequence of an intimation from Sir Home Popham, that the object was waved for the present, and that I should hear from Mr. Pitt. Since the year 1798, I have been in the habit of trading to that country by licence; in neutral vessels; and at times, to Mr. Fawkener, and to Sir Stephen Cottrell, I have suggested the great consequence the trade of that country would be to this country, and how easily it might be effected in British vessels, the place being so weak.

Q. Did you ever mention this to the Board of Trade?

A. Yes, I did several times.

Mr. THOMAS BROWNE called in, and sworn.

Sir H. POPHAM—Q. Were you master-attendant of the Cape, after its capture in January, 1806?

A. I was.

Q. Did you consider the Cape in a perfect state of security after I sailed from it with my squadron for the Rio de la Plata?

A. I did.

Q. Do you think Sir David Baird so considered it, from any conversations you had with him on the subject?

A. I do.

Q. Relate to the Court as shortly as possible, the substance of these conversations on the state of defence in which the Cape was.

JUDGE ADVOCATE—"I doubt that this is evidence, and I feel myself bound in my official situation to state my *opinion*."

Sir HOME POPHAM—"Surely I shall not be precluded from entering into evidence obviously necessary to rebut the charge against me."

Admiral STANHOPE—"Sir Home Popham has unquestionably a right to put this question, as it is a part of the charge against him, that the Cape became defenceless in consequence of his leaving it."

The Court decided, that Sir Home was entitled to follow up this question.

Q. Did Sir David Baird ever consult you about placing any batteries? and what did he say to you on the subject of the defence of the Cape?

A. Sir David Baird never consulted me about placing batteries, but he told me that he had erected additional batteries for the protection both of Table Bay and Simon's Bay. I have gone to the batteries a dozen times, and have seen the different batteries. I have heard Sir David Baird repeat, more than once or twice, he wished Bonaparte, with 10 or 12,000 of the flower of his army, would come to attack the Cape, and he would give him such a drubbing that he would wish himself back in his own country again. I have heard Sir David Baird say that all the round

towers, and different batteries, were in complete and good repair; and it was impossible to make the Cape very little stronger than what it really was.

Q. Were you at the Cape when the *Cannoniere* French frigate anchored there?

A. Yes.

Q. Where did she anchor?

A. She anchored in False Bay, nearly as I have marked in the chart delivered to the Court, outside both Noah's Ark and the Roman Rock. She never came into Simon's Bay. (*Produces the chart, and points out the spot.*)

Q. If I had been lying in Table Bay with the whole of my squadron, do you think I should have been able to have taken that frigate?

A. I do not.

Q. If I had been lying in Simon's Bay, under the circumstances of wind and weather when she came in from the eastward, or under the general circumstances of wind and weather at that time of the year (May, I believe), and with the most common look-out on the part of the enemy, do you think it possible that I could have taken her?

A. I do not.

Q. State to the Court your reasons.

A. When the commodore was lying at anchor in Table Bay with the most part of his squadron, there was a signal made from the tower on the Lion's Rump, that there was an enemy's cruiser bringing to a ship in the offing, and a signal was made for the *Leda* and *Narcissus* to prepare to slip and chase the said ship, but it continued calm all that night and all the next day in Table Bay, and the enemy had a breeze in the offing. I think it was about six o'clock the next evening when the *Narcissus* went to sea; and the vessel that she had boarded, I went on board when she came in, and found that the enemy's cruiser had fired a shot right through her main-mast, and rendered it useless. She had told the officer who had boarded her from the French cruiser (who said it was the *Piedmontaise*), that the Cape was in the possession of the English, which prevented her coming in, and our capturing her; for if she had come in, she would have been be-

calmed in half an hour, and the current would have brought her in.

COURT—Q. What month was this in?

A. The latter end of March or beginning of April. I am almost certain it was March. The log-book of the Narcissus, in the possession of the Admiralty, will shew all the particulars.

Sir HOME POPHAM—Q. When you say the French frigate would have got into the calms and been captured, I suppose you mean that she would have been thus completely under the fire of the batteries?

A. I do; both under the fire of the batteries and under the guns of the ships.

Q. If the Piedmontaise had not received information of the English being there, and had attempted to come in, could she not, if the breeze had continued with her until she had discovered our ships in Table Bay, have made her escape, unless we had some cruisers off the outside of her?

A. I am certain she could.

Q. State to the Court the reasons that occurred to you, why, in all probability, I should not have been able to capture the Cannoniere, if I had been lying in Simon's Bay with all my squadron.

A. Ships coming into False Bay, round the Cape of Good Hope, at a considerable distance, on account of two rocks called the Bellows and Anvil, stand over towards Cape Hang-lip, north of the bay, for the purpose of getting into the true breeze, and avoiding the current, which generally sets out on the south part of the bay, and to keep to the northward of the Whittle Rock. By that means, Simon's Bay is clearly exposed, and any ships lying there at anchor: on that account, I believe that cruisers would make private signals, and I am certain that the Cannoniere was in possession of the private signals used by the Dutch at the Cape; as the officer, who was made prisoner with the boat's crew, said she had dispatches for Governor Jansen, the Dutch governor; and also the wind on that day was, on the south side of that bay and Simon's Bay, light and variable, and she kept working up on the north side of the bay the whole time, until she came to an anchor. The ships that were lying in Si-



Simon's Bay at the time were the Rolla (refitting), a transport, and two or three merchant vessels; perhaps more.

Q. As you say you know the *Cannoniere* had the private signals of the Dutch, I suppose you imagined she would naturally have used them, if any man of war had been lying in Simon's Bay.

A. I think she would.

Q. At what distance can ships lying in Simon's Bay be fairly made out by cruisers coming from the eastward?

A. They can be made out at five leagues—perfectly plain at four.

Q. Is it not in general calm during the day in Simon's Bay, while there is a breeze both in the eastern and southern parts of the bay?

A. Yes; it happens sometimes five days in the week.

Q. When did you leave the Cape?

A. About the 22d of August.

PROSECUTOR—Q. On what day did the *Cannoniere* come to anchor, as you have described?

A. I am sure I do not remember.

Q. Was it on the 30th of May?

A. I believe it was.

Q. After Sir Home had left the Cape?

A. Yes.

PRESIDENT—Q. If the French frigate, supposed to be the *Piedmontaise*, had not been prevented from going into the Cape; by speaking the vessel you have mentioned, and had got into the calm; could she have anchored out of the reach of the batteries?

A. She could.

Q. If a squadron of ships had been at anchor in Table Bay, could she have anchored out of the reach of their guns?

A. Most certainly she could, out of the reach of all the guns in the world. There is anchorage all along the coast there as far as Saldanha bay.

Q. If she had got under weigh at any time, is it not probable that some ships of the squadron might, at the same time, get under weigh to chase?

A. They might or might not; because sometimes,

In Table Bay, over half the bay it blows a fresh breeze about eleven o'clock from the southward. I have seen ships in the south part of the bay in such a gale as no boat could ply, and on the opposite side a light breeze; and at four o'clock in the afternoon the breeze in the S. E. in the offing sets in, while there is a light breeze to the westward; sometimes, and generally about four o'clock in the afternoon, the breeze is all over the bay, from South-East; while, in the offing, I mean outside Green Point, there is a light breeze from W. S. W.

Q. Were you at the Cape when the *Volontaire* was captured?

A. I was.

Q. When she had anchored, if there had not been any ships of war at anchor in the bay, or cruising without it, might she by cutting her cable have got to sea, and escaped?

A. Where she anchored she could not, as there was little or no wind when she let go her anchor, as she was between the Amsterdam battery and Chevant, within musket-shot, and red-hot shot in the furnaces; and she would have been sunk or blown up before she could have got without the reach of the guns, from the light air that was at the time from the westward.

Q. Did she strike before entering, or after she had anchored?

A. The sails were all clued up, and the men were going up to furl the sails, and the anchor was either gone or letting go at the time she hauled down her colours.

Q. Did she make any private signals to the Cape before she anchored?

A. I cannot say whether she did or not.

Q. Did you see the officer of the *Cannoniere* who was taken?

A. Often.

Q. Did he know, or did he suspect, that the Cape was in possession of the English?

A. No, I believe he did not; to the best of my knowledge, he knew nothing about it.

Q. Do you know whether the general or the commander had the private signals of the Cape?

A. I am certain they both had them.

Q. Then, if a ship going into Simon's Bay had made the private signal to any of his Majesty's ships lying there, that signal could have been answered?

A. It might certainly.

Q. You have said, that the ships lying in Simon's Bay might be clearly distinguished from a ship at sea four leagues distance—is the land under which the vessels lie in Simon's Bay high or low?

A. High.

Q. Do you think ships lying under high land can be distinguished by a ship four leagues off?

A. I do.

Q. Do they lie near the land, or at a distance therefrom?

A. They lie pretty near the land, and on the W.N.W. side of the bay, where it is a very white high sand hill; any ships lying there must be discovered by ships which keep the north side of False Bay.

Q. If the *Cannoniere* had gone into Simon's Bay as incautiously as the *Volontaire* did into Table Bay, could she have anchored out of the reach of the batteries?

A. She could not; there is no ship can anchor in Simon's Bay out of gun-shot. There were then heavy batteries placed there by Sir D. Baird.

Q. If she had anchored within reach of the batteries, could she, by cutting her cable, have put to sea, and escaped?

A. She could not that day; as it fell calm in Simon's Bay almost the instant she anchored in False Bay, and continued calm the whole day in that bay.

Q. I mean now generally to ask whether any ship, anchoring in Simon's Bay under the fire of the batteries, as you say they must be, could, by cutting her cable, escape if it was not calm?

A. I do not think she could escape, as they always kept the shot in the furnaces whenever any vessel was seen. As the batteries are so immensely strong, she must be either sunk or blown up.

Q. How near to the batteries is it necessary a ship should anchor?

A. About half-gun-shot; to have a good birth you cannot go too close in.

Q. If at the time the *Cannonière* anchored, ships had been cruising without Simon's Bay, and other ships of his Majesty had been at anchor within it, is it probable that she could have escaped?

A. I do not think she would have come there at all, if there had been ships cruising outside; because she would have seen them before, and made the private signal to them.

Q. You have already said, that private signals might have been answered?

A. What I have said before is right.

Q. Were there any ships under sail off the Cape when the *Volontaire* went into Table Bay?

A. There were two.

Q. Why, then, do you suppose that the *Cannonière* would not have gone into Simon's Bay, if ships were cruising off; as the *Volontaire* did go into Table Bay, although ships were cruising off?

A. Because I suppose she would have the private signals; I suppose the one would have taken more precaution than the other, because the one came from the Isle of France, which had intercourse with Batavia, and I suppose she had the private signals, as she had dispatches for the Cape; and the other, coming from Europe, I did not suppose she had the private signals. I knew for certain she came from Europe, because she was boarded three degrees north of the line.

Q. Did you see the captain and officers of the *Volontaire*?

A. I did, the whole of them; and dined with them frequently.

Q. Did you learn from them, that they were bound to the Cape?

A. I never had any conversation but with one, as he alone could speak English, and I do not understand French. I never heard him mention particularly that they were coming to the Cape; but understood from him, that his admiral was to be found cruising off Le Guillas; and that the *Volontaire* came in for the purpose of getting rid of their prisoners, as they were then sickly, were getting more so, and wanted water.

Q. Were any additional batteries raised on that part

of the coast where Sir D. Baird and the English army landed?

A. I do not know.

Q. If an enemy had attempted to land in the same place, would not the presence of ships of war have rendered their landing more difficult?

A. I should think so.

Q. When Sir Home Popham sailed from the Cape with his squadron, what vessel of war was left in the Bay?

A. I was not at the Cape at the time Sir Home sailed; I was absent with dispatches, but arrived the next day.

Q. After your return to the Cape, how long was it left without ships of war?

A. Only the brig that I had the command of, the *Rolla* (mounting eighteen guns); and about a fortnight or three weeks afterwards, Capt. Bligh, in the *Porpoise*, and the *Woolwich* horse-ship, with the *St. Clair* Indianman, arrived in their way to New South Wales.

Q. Any others?

A. Then came the *Lion*, of 64, a good while afterwards; about two months afterwards, July I believe; the *Medusa* also, with the *Lion* and a convoy. The *Adamant*, Capt. Stiles, and the *Protector* gun-brig, arrived two or three days after Capt. Bligh, before the *Lion*. The *Lion* went to India, and the *Medusa* to the Rio de la Plata; they staid about a week at the Cape. The *Adamant* staid about fourteen days altogether; the *Porpoise* staid about three weeks.

Q. Any others?

A. Not any others.

Q. State the period of your return to the Cape.

A. I believe it was the 15th of April, the day after the commodore sailed.

Q. How long did you remain there afterwards?

A. Till the 21st or 22d of August, 1806.

Q. Between the time of your return to the Cape and of your leaving it, did any reinforcement of troops arrive at the Cape?

A. Yes.

Q. Do you know how many?

A. One regiment from England, and 200 men, or thereabouts, who were prisoners on board the *Volontaire*. Besides these there was a Hottentot corps of 5 or 600 men raised whilst I was there, under the command of Colonel Græine.

Q. Where did the regiment come from?

A. From England I believe.

Q. Within the same period, did any number of merchant vessels arrive?

A. Two or three English vessels, and all the rest neutrals. I do not know how many besides those that came under convoy.

Q. Do you recollect whether the *Cannoniere* made any signal to the Cape before she anchored?

A. I do not recollect it.

Q. Did you hear where the soldiers were taken?

A. I understood, in a transport off Ushant, going to England.

SIR HOME POPHAM—Q. You have said, that you are certain that Sir David Baird and myself were in possession of the Dutch private signals: I suppose you mean the colonial signals, or the signals made from the signal stations?

A. I certainly do mean the colonial signals.—The same man who was signal-man to the Dutch was the signal-man to the English; he has been there about twenty years.

Q. Do you mean to say, that I had any of the Dutch ships private signals?

A. I do not; I mean the signals made at the Cape at Lion's Rump.

Q. Could the merchant ships have lain, either in Simon's Bay or in Table Bay, completely protected from any insult of the enemy, by being properly moored in either of those bays?

A. Certainly they could in perfect safety.

Q. As you have said, it is generally calm in the daytime in Simon's Bay, while there is a strong breeze in False Bay, do you think that any of the enemy's cruisers, standing in for Simon's Bay, would not have been clearly made out from the hull and rigging of the ships lying in Simon's Bay, whether they were not

British men-of-war, and consequently have taken the advantage of the breeze they were in to make their escape, while the ships at anchor were becalmed.

A. I certainly do.

Q. Was the Gazette of Lord Nelson's action, in which the combined fleets of France and Spain were destroyed, published at the Cape of Good Hope in the course of three weeks or a month after we captured the Cape?

A. I recollect it perfectly well being published, and a salute was fired at the same time; but I cannot ascertain the time.

The COURT—Q. Was it before Sir Home Popham sailed?

A. Yes.

Sir HOME POPHAM—Q. Is it not within your knowledge, that Sir David Baird had equipped and exercised a very strong corps of flying artillery to send to any part of the coast where an enemy might appear, if there was the smallest suspicion of his meaning to land?

A. Yes; I have seen them exercised every day, if it was fine weather, for a month together, under the direction of Major Spicer.

The COURT—Q. What were the number?

A. I do not know the number; there was a long wing of them; they reached the whole length of the street.

Sir HOME POPHAM—Q. If the enemy had been in possession of such a corps of flying artillery, would they not have most severely annoyed us in landing, in consequence of the very heavy surf there was in Losport's Bay, when we did land, and which is in general upon that part of the coast—provided, I mean, if the enemy had sent that artillery to be used against the disembarkation?

A. Most certainly they would.

Q. Do you remember the Fortuna brig, under neutral colours, being captured in Table Bay by one of the boats of your department, and the person who boarded her brought on shore the nephew of Schimmpenninck, President of the Batavian government, with all his dispatches?

A. I do perfectly well, and they were secreted in the drawer of a trunk. They were opened in the castle by Colonel Vassel, and I heard them read in the government-house, before Sir David Baird, after Sir Home sailed. It was some time after Sir Home sailed. The gentleman who had them was named Dowy; and they directed the commander of the Cape to deliver it up even to any French officer of inferior rank to Governor Jansen; and I heard Sir David Baird say, he would send the dispatches by me to government.

The PROSECUTOR—Q. Do you recollect when the dispatches bore date?

A. I do not.

Q. Where did they come from?

A. From Amsterdam, signed by Schimmelpenninck.

Q. Was the brig taken after Sir Home had sailed for the Rio de la Plata?

A. Yes.

Q. How long?

A. Some time; it may be a month or two months.

Q. Was the purport of those dispatches to inform Governor Jansen that a French force might be expected to arrive at the Cape?

A. The dispatches did not say that a French force was expected. All that I can recollect of it was, that that if a French officer of even inferior rank arrived, he was to give up the command.

PRESIDENT—Q. Then you are quite sure there was no mention of troops?

A. I do not recollect the mention of any troops; but it ordered the officers to have no dispute about seniority; and to encourage the men to go hand in hand with the Frenchmen, whom they must consider as brothers.

CAPTAIN KING called in, and sworn.

Sir HOME PORHAM—Q. How long have you been an officer in the Royal Navy?

A. Nearly twenty years, three of which as acting-lieutenant.

Q. Where have you chiefly served?



A. In the East Indies, Cape of Good Hope, and home service.

Q. Were you twice at the capture of the Cape of Good Hope?

A. Yes.

Q. What time were you appointed to command the Diadem?

A. In January, 1806. I think the 13th.

Q. Do you remember the circumstance of the boats of the squadron capturing the Rolla brig, by which the letters from Admiral Linois to Governor Jansen were intercepted, stating his extreme distress for provisions, and expressing a desire that the governor would procure some for him against his arrival, which he hoped would be by the first of March?

A. I do.—Those letters were found on board the Rolla, were brought to me, as captain of the flagship, and forwarded by me to Sir Home Popham.

Q. Do you remember my examining the French officer who commanded the Rolla, about the state of the Marengo's provisions; and his expressing as his strong belief, that she could not remain so long (without coming to the Cape) as the first of March, unless she could previously procure some provisions?

A. Perfectly; as he made no secret of her being destined to the Cape, knowing that we had read the letters.

Q. Do you remember hailing the Volontaire, French frigate, to strike her colours when she passed the Diadem, coming into Table Bay?

A. Yes.

Q. On a report being made to me that she had scarcely any water on board, do you recollect that I ordered a supply to be immediately sent for present expence, either from the Diomedé or Raisonable?

A. I do.—The signal was immediately made; but to which ship I cannot recollect.

Q. Was not the Volontaire considered as the forerunner of Admiral Willeaumez's squadron?

A. Certainly.

Q. State to the Court, whether or not, from the conversation you had with the French officers of La

Volontaire, that the Cape was the first destination of Admiral Willeaumez's squadron?

A. From all the conversations I had held with the French officers, I entertained no doubt but that they were destined to the Cape of Good Hope; and in a conversation with Captain Brettle, who commanded La Volontaire, he expressed much uneasiness for the fate of the French squadron; stating his fears that they would arrive two at a time to water and refresh.

Q. Did you imagine, from the conversation with the French officers, that either all or part of the French squadron might be hourly expected at the Cape?

A. Certainly; as La Volontaire had been long parted from them, and had been long at sea.

Q. What did you understand to be the ultimate destination of Admiral Willeaumez's squadron, from any information you obtained by the various conversations you have stated to have had with Captain Brettle and the other officers of La Volontaire?

A. I obtained information, which appeared to me to be certain, that they were bound to the Brazils for refreshments, and then to the West Indies; which information I communicated to Sir Home Popham, having obtained it from an officer of La Volontaire, whom I did not think much in the French interest.

Sir HOME POPHAM hoped that the name of this officer would not be required.

Q. What rank was he?

A. He was a lieutenant.

Q. Were you not aware that I had been acquainted with the officer in question before the present war?

A. Yes.

Q. Do you not imagine, from the circumstances which transpired, that the officer in question was exceedingly inclined to give me every information in his power, with respect to the situation and destination of Admiral Willeaumez's squadron?

A. Yes.

Q. Did I not appear perfectly satisfied, from the information which I had obtained from this officer, mu-

terially corroborated by the collateral information of Captain Brettle and the other officers, that Admiral Willeaumez had sailed for the Brazils long before I expressed any intention of proceeding to the east coast of South America?

A. Certainly.

Q. Do you remember our receiving intelligence that Admiral Willeaumez had really arrived at St. Salvador on the coast of Brazil, on the 1st of April, and sailed from thence to the West Indies on the 20th?

A. Yes.

Q. That information was, I believe, received by us on our arrival in Rio de la Plata; and I ask you whether it did not completely confirm the information I received from the French officer antecedent to my sailing from the Cape?

A. To the first part of that question I answer, it was to the best of my recollection, that was the information received on our arrival at the Rio de la Plata; to the latter part I answer, that it did confirm the information received from the French officers of La Volontaire.

Q. Do you remember my going on shore at the request of Sir David Baird, accompanied by the captain of the squadron, to make a regular inspection into the state and position of the batteries; and how far those already erected, and erecting, in consequence of my suggestion, would completely command what is called the anchorage of Table Bay, all the landing places, from Three Anchor Bay to the westward of Green Point, down to Craig's Tower, on the eastern part of the bay?

A. I do, as I attended you on that occasion.

Q. Do you recollect Sir David Baird expressing himself most perfectly satisfied with the state of defence in which the Cape was?

A. I do; I have frequently heard him expressing himself in a way that convinced me that he apprehended no danger from any attack of the enemy.

Q. Will you inform the Court whether you formed the same opinion yourself, from the observations which you made on the strength and position of the batteries?

A. As far as I could judge of a military position, I

should consider the Cape in the hands of Sir David Baird, and the troops he then had, as nearly impregnable.

Q. State to the Court whether, in your opinion, all the yearly commerce between England and India, if it could be collected in Table Bay, would not be perfectly secure from any attack of the enemy?

A. I think any hostile men of war that might attack them would be destroyed by the effect of the batteries, provided the merchant ships were properly placed.

Q. Do you remember the Gazette of Lord Nelson's victory over the Combined fleets being published at the Cape of Good Hope?

A. Yes.

Q. Was that antecedent or subsequent to the capture of La Volontaire?

A. I cannot recollect.

Q. Will you endeavour to recollect?

A. I think it was subsequent; but I cannot be sure.

Q. Coupling the impression which you had on your mind by the detailed destruction of the Combined fleets from the different Gazettes which came to the Cape, with the intelligence which we received by La Volontaire of the state of the French ships at Brest and other ports, did you imagine that the enemy could collect any force in Europe to make any attempt on the Cape of Good Hope?

A. I had no idea that they could.

Q. Is there any place, within your knowledge, that is so difficult to make an impression upon, by an invading army, as the Cape of Good Hope?

A. No, speaking generally; as I do not mean to include Gibraltar, Cadiz, and such fortresses as those.

Q. Do you know that Sir David Baird was equipping and practising a very strong corps of flying artillery, and had raised a corps of Hottentot riflemen, before I left the Cape for Rio de la Plata?

A. Yes, he was rapidly raising the latter; the former he was equipping, and constantly practising.

Q. If the enemy had been in possession of such a corps of flying artillery, and had attempted to oppose our landing with it, should we not have very materially suffered in consequence of the very heavy surf

that generally rolls in upon that beach, to the northward of Craig's Tower—if the expedition had not been totally defeated?

A. If the enemy had been in possession of such a corps, and it had been well served, and done its duty, I think the landing would have been impossible, as a landing at the Cape is at the best of times very difficult.

Q. Do you apprehend that any naval power is so expert in their boats, or so competent to land under circumstances of extreme difficulty, whether from the surf or the personal exertions opposed to them, as the officers and seamen of the British Navy?

A. No; in my answer to these questions I apply them to the limits mentioned in the preceding questions.

Q. Was it not generally understood by Sir David Baird, and the principal military officers at the Cape, that the best possible defence against an invading army was a strong corps of flying artillery?

A. Certainly.

Q. When I sailed from the Cape of Good Hope with the whole of my squadron, did you not know, and was it not generally understood, that I was going to attempt a *coup de main* against one of the enemy's possessions on the Rio de la Plata?

A. Yes.

Q. Could I have possibly left behind a frigate, or even a gun-brig, without risking the success of whatever attempt I meant to make on either of those settlements?

A. No; as our force was small when combined.

Q. As you say the force was small, I wish to ask you, from all the information which we were in possession of respecting the defenceless state of the enemy's possessions on the Rio de la Plata, was there the smallest doubt expressed by any officer in the army or navy employed on that expedition, or by General Baird, of our obtaining complete possession of one of the places above alluded to, provided we sailed immediately, and acted with promptness and vigour on our arrival in the river?

A. No.

Q. Did you ever directly, or indirectly, hear that

Sir David Baird offered the least objection or argument against my taking the whole of my squadron from the Cape, of which place he was lieutenant-governor; or express a wish for any thing to remain beyond the Charlotte schooner, which was held ready to follow me with any dispatches that might arrive from Europe?

A. Never.

Q. Is there any thing that ever came to your knowledge which could induce you to believe or suspect that my object for undertaking the attack of Buenos Ayres was not to advance the public interest of the country, and to meet the wishes of those under whom I thought I was acting, by endeavouring to establish a permanent position on the Rio de la Plata?

A. From the various conversations I have had with, and the knowledge I have of you, I am confident you had no object in view, but the annoyance of the enemy, the honour of the service, and the public interest of the commerce of Great Britain.

Q. After the capture of Buenos Ayres, did I not do every thing by precept and example, to conciliate the minds of the inhabitants, and to prove to them that the great object of the expedition was to establish an intimate commercial intercourse between that country and Great Britain?

A. You did.

Q. Were not suggestions frequently offered to me on the propriety of immediately embarking the quicksilver and bark, and other valuable articles which were particularly situated at Buenos Ayres, which suggestions I declined, until the fleet was completely provisioned; and by that attention to the public service did I not make every material sacrifice, and to what amount in your judgment?

PRESIDENT—"There is no charge whatever against you to which this question can apply; you are not accused of improper conduct in South America."

Sir HOME POPHAM—"I hope this Honourable Court will feel, that, considering the censure which has been pronounced upon me in the House of Commons, and which censure has been

industriously circulated through the country, that it is not incorrect in me to enter into an examination which may serve to prove the injustice of that censure, and to confirm the statement which I have made in my defence."

Admiral STANHOPE thought the honourable captain ought to be allowed to put this question, if it were only for the consideration of freeing his character from censure; at the same time he had no hesitation in stating, that for the purpose of removing suspicion from the breast of that Court, this question was altogether unnecessary, for no such suspicion as the question referred to could possibly exist against the character of Sir Home Popham.

The JUDGE ADVOCATE suggested for the consideration of the Court, if they once admitted the principle upon which this question professed to be grounded, how far it was likely to lead.

Admiral COFFIN—"If the whole House of Commons had censured Sir Home Popham, it could not affect us in deciding upon this charge, and still less as to the point to which this question alludes."

Admiral ROWLEY—"It is impossible that any man can suppose Sir Home Popham influenced by sinister motives."

Sir RICHARD STRAHAN—"Certainly no one can impute such motives."

The Members of the Court generally expressed their acquiescence in this sentiment. But for the satisfaction of Sir Home, it was decided that he should be allowed to proceed in the examination.

*The question continued*—Did I not refuse to comply with the suggestions I have already mentioned?

A. I frequently proposed to you to embark the pro-

party, to which you constantly declined until the fleet was completely victualled; and I think you thereby made a personal sacrifice of at least 20,000l\*.

Q. Do you remember my having sent from the Cape of Good Hope to England, to Admiral Cochrane in the West Indies, to Sir Edward Pellew in the East Indies, and to the officer commanding off the Mauritius, the intelligence I received of Admiral Willeaumez's fleet, and its probable ultimate destination?

A. Yes.

Q. Do you recollect ever to have known an instance of the intelligence which I received, and which I generally communicated to you, to have been incorrect?

A. No; I do not recollect any.

Q. Was there ever a doubt entertained by any captain of the squadron, that the Rio de la Plata was completely within the Cape station?

A. Never; and I have heard them frequently converse on the subject.

Q. Was it not within your own knowledge, that Captain Rowley, who commanded the *Raisonné* under my orders, was at the Cape station last war in different ships?

A. He has told me so, and I think he told me he commanded the *Imperieux*.

Q. Do you remember my having been superseded by Admiral Stirling at Maldonado?

The PRESIDENT did not see that this question had any connection with the charge.

Sir HOME POPHAM—"My object in adducing this point of evidence is to corroborate the statement I made in my defence, as to the man-

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\* This witness here rated Sir Home's profit merely as a captain; but as commodore, the personal profit immediately within his reach, by compliance with the suggestion of his officers, would have exceeded 50,000l. and the property from which he might have derived this profit was on the quay, quite convenient for embarkation. After the establishment of such a fact, can it be patiently endured that such denunciation should go forth as that which Lord Howick's strictures upon Sir Home Popham's conduct convey in the words already alluded to—relative to "an officer's quitting the station to which he was appointed, merely to pursue his own private profit?"—*ENTEREX.*



ner in which I was treated upon the occasion alluded to; I wished also to shew, that if I were at all apprised, or aware of the intention to bring me to trial, I could have brought home a variety of necessary evidence."

The PRESIDENT—" It is certainly allowable to go into the point as to your capacity to produce further evidence, if you were aware of the trial."

Sir HOME POPHAM—" I can also shew that the officer appointed to supersede me, did offer an indignity which I submit was not less unworthy the cause of justice than the character of a British officer—that I applied for a transport for my conveyance home, which was refused me; and that I was obliged to come home in a brig quite ill suited to the accommodation of any passengers."

The JUDGE ADVOCATE—" If it were necessary to the case of the prisoner to produce farther evidence, he might have applied for farther time to send for them before a court-martial was assembled. There is now an order for a court-martial in my hands, which has stood over for some months waiting for evidence.

Sir RICHARD STRACHAN asked the Judge Advocate whether Sir Home Popham had made any application for farther time, in order to have the opportunity of collecting farther witnesses?

The JUDGE ADVOCATE answered in the negative, adding, that he had no doubt if the application were made it would have been complied with.

Admiral STANHOPE thought there could be no doubt in the mind of the Court, that if Sir Home Popham was in due time aware of this trial, he might, from the nature of the case, procure farther and, perhaps, better evidence.

The PROSECUTOR—Q. When did Sir Home Popham first communicate to you his intention of undertaking an expedition from the Cape against any of the possessions of the enemy in the Rio de la Plata?

A. To the best of my recollection, in the last week in March, the very latter end of the month; we having, generally speaking, given up any expectations of Admiral Willeaumez about the 20th of March.

Q. Do you recollect the day when a Tonningen brig came into the Cape, and stated her having been boarded by a French squadron?

A. No.

Q. Were the letters which were written from time to time by Sir Home Popham to the Admiralty communicated by him to you?

A. No; I do not recollect to have read any part or parts of those letters from Sir Home Popham to the Admiralty, while we were at the Cape.

Q. I do not ask you, Sir, whether you ever read any of those letters, but I ask you whether the substance of those letters from the Cape was at any time communicated by Sir Home Popham to you?

A. I do not know to what letters you allude.

*(The letter No. 13. was shewn to the witness.)*

Q. Having looked at that letter, does that letter bring to your recollection the Tonningen brig having come in, and stated the fact of her having been boarded by a French squadron?

A. Yes; but I did not recollect the time.

Q. Do you now recollect the time?

A. I do not but from that letter.

Q. Be so good as to state to the Court whether the conversations that you had with Sir Home Popham on the subject of his undertaking an expedition to the Rio de la Plata were or were not prior to the date of that letter, which is the 21st of March, 1805?

A. I think I have already answered that question fully.

Q. You must answer it again.

A. Subsequent to it; I had no knowledge of Sir Home's intention prior to the date of that letter.

Q. Am I to understand you as swearing positively that you had no conversation with Sir Home Popham

relative to his undertaking an expedition from the Cape to the Rio de la Plata, prior to the date of that letter?

A. Certainly.

The COURT appearing to disapprove of the word swearing, so emphatically mentioned, the prosecutor apologized to the Court and to the witness, and begged rather to have the word *speaking* substituted for it in the minutes, which was done accordingly.

Q. Upon your arrival at the Cape, and obtaining possession of it, did Sir Home Popham obtain the private signals of the enemy, and what signals were they?

A. We obtained of course the colonial signals—those, I mean, used at the signal-posts.

Q. Were those signals communicated to the several captains of the squadron?

A. They were to the best of my recollection; I had a copy of them as captain of the Diadem.

Q. Had any signal been made to La Volontaire before she struck?

A. Not that I recollect.

Q. Were any ships cruising without the bay at the time when La Volontaire stood in?

A. The Reasonable and Narcissus were at sea, and chased La Volontaire in.

Q. Supposing La Volontaire had not struck to the Diadem, and no ship had been there, would not those ships have been able to have captured her?

A. No; because the Diadem would have sunk or blown her up.

Q. You do not understand my question. I ask, that supposing no ship had been in the bay, would not those ships have been able to capture her?

A. Yes, I think they would.

Q. Is it not therefore manifestly of advantage to the Cape, to have some of his Majesty's ships on that station which could be so employed?

A. The Board of Admiralty are the best judges of that.

The PRESIDENT—Repeat the question. Are you not competent to say whether it would be advantageous to have ships off the Cape?

A. It would be advantageous at all times to have ships cruising in every probable situation that enemies' ships may be found in; but with respect to the particular advantage to the Cape, I do not see any.

Q. I apprehend you do not understand the question: when you speak of advantage to the Cape, do you mean to refer merely to the soil, to the rock, or to its security, or to its trade?

A. If the question be understood as referring to trade, I think such cruisers would be of advantage.

Q. You have described to the Court what you consider to be the strength of the Cape as a military position,—do you not think that its security would be materially added to in the event of an attempt upon it, by its having also a naval force for its protection?

A. As far as I can judge, the Cape is extremely strong, and well capable of being defended without ships; but undoubtedly the addition of ships, if the enemy were not superior in naval force, would be an assistance.

PROSECUTOR—When did Sir Home Popham sail from the Cape to the Rio de la Plata? what naval force did he take with him? and what did he leave behind?

A. He sailed in the middle of April, 1806, I think the 13th or 14th; took with him the Diadem, Raisonné, Diomede, Narcissus, and Encounter gun-brig; I do not know of any man of war left behind.

Q. Did you return home with Sir Home Popham?

A. I did.

The PRESIDENT—Q. Did any ship or vessel arrive at the Cape, from which you obtained intelligence on the day of your sailing, or the day before, relative to Buenos Ayres?

A. Not that I recollect.

Q. When the *Volontaire* was taken, she had on board a number of English prisoners—do you recollect how many?

A. To the best of my recollection they might amount to nearly 200—between 150 and 200.

Q. Do you know what was the number of her crew?

A. I think about 800.

Q. When she arrived, was she very short of water?

A. Yes.

Q. If she had not had those 200 prisoners on board, might she not have continued much longer at sea without being very short of water\*?

A. Certainly; inasmuch as the proportion those prisoners had used.

Q. You have spoken of the intelligence you obtained from an officer of the *Volontaire*, relative to the destiny of Willeaumez' squadron. I think you said he was a lieutenant. Did you learn from him by what means he himself was informed of that destination?

A. No; but I considered him and found him a very intelligent man, and one who appeared to me to be much in the confidence of his captain.

Q. Did he tell you that he had seen the orders of Admiral Willeaumez, or that his captain had informed him what those orders were?

A. No.

Q. You have said, that if the whole of the commerce between Great Britain and the East Indies were properly anchored in Table Bay, that it might be defended from the batteries on shore.

A. In giving that answer I meant to say, that as many ships as could be properly anchored in the bay would be protected by the batteries.

Q. Would those ships be protected by the batteries before they approached near the shore in going into Table Bay?

A. Yes, before they got near the shore—the guns are heavy, and reach a long way, and are close down to the shore.

Q. Would those batteries protect the ships some leagues from the shore†?

A. Certainly not.

Q. Would then the commerce of the Cape, or ships bound thither, be better protected by ships of war cruising off the Cape, than without?

A. Yes.

Q. On what day was the *Volontaire* taken?

A. I think it was the 4th of March.

Q. I think you have said that, from the information

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\* What a sagacious question!—EDITOR.

† Another sagacious question!—IBID.

you obtained from the *Volontaire*, of the state of the French ships at Brest and other ports, you had no idea that the enemy could collect in Europe any force to make an attempt on the Cape?

A. Yes.

Q. Did you obtain from the *Volontaire* information of the naval force in Holland; of the naval force in Toulon; of the state of the ships that escaped into Cadiz; or of those that were left by the *Volontaire* in Brest; or of the squadron in Rochefort?

A. No; but in all the conversations that I had with the French officers, which were numerous, I understood it to be their opinion, that the naval forces of the allies of France, as well as herself, were not in a state to attempt offensive operations, generally speaking; upon which I had founded my opinion.

Q. Do you mean, that it was the opinion of those officers, that neither France nor her allies would be capable of sending any squadron to sea?

A. I do not know what might be their opinion of France or her allies being capable of sending out a few cruisers; but I think it was their opinion that they were not in a state to send to sea a naval expedition.

Q. I think you have said that Sir David Baird considered flying artillery as being the most efficacious means of preventing a landing of troops on the coast?

A. Yes.

Q. Did you understand him to consider that they were so efficacious as to render a naval force unnecessary?

A. No: I never heard him speak of the co-operation of a naval force with his flying artillery; but I have frequently heard him express his opinion that the Cape was in perfect security, and his opinion, that the landing of troops, opposed by his army, amounted almost to an impossibility; and I conceive that, had the Dutch made a proper resistance with their flying artillery at Lotspur's Bay, it would have been very difficult, if not impossible, to have made good our landing.

Q. Is the road between the Cape and Saldanha Bay of such a description as to admit of flying artillery being rapidly transported there, if an enemy should attempt to land on that part?

A. I have never been from the Cape to Saldanha Bay by land, and do not know.

Q. You have said that you do not know that Sir David Baird had ever objected to the whole of the naval force going with Sir Home Popham with the troops?

A. I have.

Q. Can you say that he never did make the objection?

A. I can't say what might have passed between Sir David Baird and Sir Home Popham, when I have not been present; but I think it likely, if he had objected, I should have heard of it.

Q. You have said, that there was no doubt in the mind of any captain of the squadron, that Buenos Ayres was within the limits of the command of the officer commanding at the Cape—have you ever seen any orders or instructions which can justify the belief of its being within such limits?

A. No: but I have ever understood so, and from knowing that the cruisers of the Cape station have gone frequently to cruise at the mouth of the Rio de la Plata, and some as high as Monte Video, I could entertain no doubt on the subject.

Q. You speak of the cruisers having so done from your own knowledge?

A. No: I was not in any one of them, but have heard so from the men of the Diomedé who were there.

Q. After leaving the Cape the squadron went to St. Helena: did you find there any of the East India Company's ships, or any other British ships, waiting for convoy to England?

A. Not that I recollect.

Q. You related, that under Sir D. Baird, you thought the Cape nearly impregnable—do you mean to say that the Cape was nearly impregnable after the sailing of the squadron under Sir Home Popham with the troops for Buenos Ayres?

A. I mean to say that the enemy must have sent so large a force to make any impression as would render it next to impossible for them to arrive there with such a force and within such a time of the season, as to afford the smallest prospect of success.

Q. Then when you spoke of it as impregnable, you took the season into account?

A. I mean that the season was such as would more than make up for the absence of the fleet. It was such indeed, that it was next to impossible to attack it, or if an attack were attempted, it would require a most extravagant force to make a successful landing against Sir D. Baird and his forces. I mean this subsequent to our sailing for Buenos Ayres.

Q. Do you know when the winter is supposed to begin at the Cape?

A. I should conceive the latter end of April.

Q. You left the Cape with the squadron about the 13th or 14th of April,—was there any thing to prevent, from the season, a squadron anchoring there during that month?

A. No: if they chose to risk lying there in bad weather.

Q. Do you know what force Sir David Baird had with him after the squadron sailed?

A. I should think about 6000 men.

Sir HOME POPHAM—Q. Be so kind as to take the letter presented to you by the learned prosecutor, and state on what day does it appear the Tonningen brig was boarded by the French fleet?

A. On the 25th of February.

Q. Is not the Cape considered a very tempestuous station to cruise off, particularly in the winter?

A. Yes.

Q. Did we not leave the Raisonable and Narcissus in False Bay a day or two preceding their coming in with La Volontaire, and were they not then returning to Table Bay?

A. Yes, they were, to the best of my recollection.

Q. When you said that the Raisonable and Narcissus would have taken the Volontaire if the Diadem had not been at an anchor in Table Bay, did you not assume that the Cape was in possession of the English?

A. Yes.

Q. From the position in which we saw the three ships in the morning, do you not think that La Volontaire could have escaped under the protection of the batteries, provided the Cape had been in posses-



sion of the enemy, before the Raisonable or Narcissus could have got up with her?

A. Yes.

Q. If greater advantage can be made manifest as likely to be derived by the employment of the squadron on other service than that of remaining immediately in the vicinity of the Cape during the winter, ought not that squadron to be so employed?

A. As far as matter of opinion goes, I should reply yes.

Q. Did you hear of any capture being made by the enemy within the precincts of the Cape station, during the absence of the squadron in the Rio de la Plata?

A. I do not recollect any.

Q. Do you remember it having been told you on the night of our anchoring, after weighing on the 10th of April, that there was a person in the squadron of the name of Fisher, who had been eight years a resident at Buenos Ayres, two of which he was interpreter at the Custom-house?

A. Yes.

Q. What information did he give to me?

A. He gave a good and clear account of the situation of Buenos Ayres, and its means of defence; stating that, from his knowledge of the people there, it would be very easy to obtain possession of it with a few troops.

Q. Do you recollect my immediately going on shore to Sir David Baird with that information;—that the troops which he granted for the expedition were embarked within forty-eight hours; and that we sailed as soon afterwards as the weather would permit?

A. I do.

Q. Do you remember how severely not only the ship's company, but the British troops who were on board La Volontaire, were attacked with the scurvy, in consequence of the urgent necessity they laboured under of going on so very short an allowance of water; and do you recollect that when we were removing the sick, several of them died on their passage to the shore?

A. I do recollect that they were much afflicted with

the scurvy; and it is probable their short allowance of water might have contributed to or caused it: but as I did not attend them to the shore, I do not know, but from hearsay, of several having died; they were in a bad state.

PRESIDENT—Q. Is it likely that that ship would have had so short an allowance of water, if the British prisoners had not been on board?

A. I should think not.

Q. You have said, that you did not hear of any capture being made in the vicinity of the Cape, after the sailing of Sir Home Popham and his squadron?

A. Yes.

Q. Might not an hundred vessels, or might not the Cape itself, have been captured, between the time of your leaving the Cape and the arrival of the reinforcements from the Cape at the Rio de la Plata, without your hearing of it; and might not the same misfortune have happened after the sailing of that reinforcement from the Cape, without your hearing of it before you left the Rio de la Plata?

A. Vessels might have been captured without our hearing of it, but I think it highly improbable that numbers should meet with that misfortune, and no knowledge of it arrive by some means or other to the squadron.

Q. Had you frequent intercourse with the Cape?

A. Yes, several times.

Sir HOME POPHAM—Q. What was the last communication from the Cape?

A. I think it must have been as late as the latter end of November, by some reinforcements coming from the Cape, and one or two merchants' ships arriving.

Here Captain King's evidence closed, when that gentleman addressed the President, and expressed his hope, that nothing in the manner of his testimony, or in any answer he had given, under any misapprehension of the questions, in some instances, put to him, had left any impression upon the minds of the Court, that he intended any thing different from due respect and perfect impartiality.

The COURT answered, "Certainly not."

Captain King having withdrawn, the COURT asked Sir HOME POPHAM whether he had many witnesses more to examine, as it was now an advanced hour, (half-past four) and if he had, the COURT would adjourn till to-morrow.

SIR HOME POPHAM thanked the COURT for the patient indulgence with which they had heard him thus far in his defence. He had four other witnesses to adduce; and as he would now state the points to which he meant to examine them, it would be for the COURT to judge how far their testimony was important. The first witness he meant to examine, was Capt. Edmonds, merely in corroboration of the same points as those deposed to by Capt. King. The second was Capt. Parker, who had sailed from the Cape of Good Hope to the Rio de la Plata, conceiving it to be within the limits of his station. The next was Mr. M'Clean, who had been the confidential secretary of Admiral Christian, who could prove that that admiral was preparing, without orders, to attack the Spanish settlements, when other causes induced him to go to the Mauritius. The fourth was Capt. Dundas, who being stationed at Honduras, went a considerable distance out of his station to attack a Spanish port, without orders, and who so far from being censured, obtained marked approbation. He had also some evidence to prove the manner in which he was superseded in his command, and ordered home, without any intimation whatever of bringing him to trial, by which means he was prevented from bringing with him many important witnesses for his defence. The Honourable Captain again adverted to the disadvantage under which he laboured, in being suddenly deprived of the aid of his Counsel on the very commencement of his defence, which he had therefore to con-

duct under every embarrassment, arising out of his inexperience and incompetency to contend with the superior knowledge and ingenuity of the prosecutor, upon questions touching the law of evidence, upon points which the prosecutor was enabled to gain by traverses, but to which he was obliged to advance by open and direct approaches.

The COURT said, that it was their wish, and the purpose for which they were assembled, to do justice between the honourable officer and his country. They were ready to hear any further evidence that was relevant or necessary; but they conceived that which the honourable officer had now proposed as quite unnecessary, or in some respects inadmissible. There was no occasion whatever for any further evidence to corroborate the testimony of Capt. King, and in their opinion, the other points, to which the honourable officer proposed to apply further evidence were entirely irrelevant to the charge.

MR. JERVIS considered the testimony of Mr. M'Clean with regard to the point stated by the honourable Captain as utterly inadmissible.

SIR HOME POPHAM—"The learned gentleman's notion of the law of evidence appears quite peculiar. It certainly differs from any authority I have ever seen or heard of. For the justification of my opinion, I would refer the Court to the authority of Dr. Tytler on the Law of Evidence."

MR. JERVIS—"That is not authority."

SIR HOME POPHAM—"Then I suppose no authority is to be acknowledged but your's, Sir; but I will not enter into any further argument with the learned gentleman as to his legal objections upon the subject of admissible evidence. I will not appeal to the learned gentleman or to

the cold letter or perverted sense of his law but I will appeal to other authority, and to the liberal conceptions of this Honourable Court, whether the proof of a precedent like that of Capt. Dundas, who left his station without orders, and who by such conduct, instead of trial and punishment, met with approbation and reward—whether I say the evidence of such a precedent be not fairly admissible, and likely to be available in the case under your consideration.”

THE PRESIDENT—“There is no analogy whatever, Sir Home Popham, between your case and that of Captain Dundas. I happen to recollect the circumstance you allude to respecting that officer—he was stationed in the Bay of Honduras, and being informed that the enemy was preparing the means for an attack upon him in a port, certainly without the limits of his station, he thought it a better mode of defending his own colony to proceed at once to the attack of the enemy, where his preparation was going forward, than to wait until the enemy made an attack upon him.

Sir HOME POPHAM—“Then with great deference your mode of stating the argument for the conduct of Capt. Dundas, and which argument, I presume, formed his justification at the time, implies a direct admission, that motives may justify a deviation from discipline. Now I submit that if Capt. Dundas were to be defended on the grounds you state, I could rest my defence upon similar grounds\*. But I shall submit entirely to the will of this Honourable Court.”

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\* This remark is peculiarly just, for if Capt. Dundas were warranted in proceeding beyond the limits of his station to attack an enemy with a view of preventing that enemy from attacking a small colony, might it not be alleged in Sir Home Popham's favour, that he left his station to make an attack, in order to prevent the enemy from attacking, not a mere colony, but the country by which he was employed, and that too in its vital points, in its commerce and its revenue. For let it be recollected, that according to the evidence before the Court, the ministers by whom he was appointed, had ample reason

PRESIDENT—"I repeat my opinion, that I do not see any analogy between the two cases."

SIR HOME POPHAM—"Then, Sir, if you think this case irrelevant and any further evidence unnecessary, I shall abide by your will, and shall here close my defence."

Admiral STANHOPE recommended Sir Home to take time for consideration before he absolutely closed his defence. It would be time enough for him to-morrow to make that declaration, if he thought proper.

Admiral HOLLOWAY concurred in this recommendation, and

SIR HOME POPHAM thanked the honourable officers for their counsel, and expressed his intention to abide by it.

The Court adjourned till the next morning.

# FIFTH DAY,

*Wednesday, March 11, 1807.*

The Court met at half-past nine.

SIR HOME POPHAM having taken his place, the President addressed him nearly in the following words:—

to apprehend that France meditated the seizure of the Spanish settlements in South America, and if such seizure were made when the ports of the continent were shut against us, what was to become of the commerce of England? But without meaning any thing in the slightest degree injurious to Capt. Dundas, I would ask, whether there are not many arguments which apply in Sir Home's favour, and which do not appear to have been applicable to Capt. Dundas? For all the general reasoning which was used in the House of Commons, and in certain periodical papers, as forming an objection to Sir Home's conduct, was, in fact, not at all relevant. He did not, "by leaving his station, expose that station to attack," nor did he even risk any thing like "thwarting any concert of operation or arrangement by the government at home," with whose views he was very well acquainted, so far as regarded the expedition he undertook; nor did he, by any part of his proceedings, establish a precedent which should operate as an encouragement to officers to prefer the pursuit of private views to the public service, (the evidence of Capt. King completely rescues him from that imputation), nor was his conduct, as I feel, at all likely to produce any of those injurious consequences with regard to naval discipline or national interest, which the good-natured ingenuity of some of his opponents has conjured up to excuse a prejudice against him.—EDITOR.

" Sir HOME POPHAM, the Court did not consider your defence as closed yesterday at its rising ; you are therefore at liberty to proceed in calling for the evidence in support of your defence."

Sir HOME POPHAM "—I had the honour of stating to the Court yesterday, the points to which I intended to direct my examination of the remaining witnesses now in attendance ; and on a consideration of the length of time the court-martial had lasted, I threw myself on the protection of the Court, requesting they would point out what in their judgment would operate in my favour in removing the undue impression which the charge might have made on their minds. As they were kind enough to express in strong terms, that the evidence of Capt. King wanted no corroboration, I naturally waved calling in Capt. Edmonds or any other person ; but as the public may possibly think I had but one solitary professional evidence, I humbly submit their allowing to be inserted on the minutes the names of the witnesses, and the objects which I hoped they would corroborate.

The PRESIDENT- " As far as the evidence goes to answer the charge, it would be perfectly right that you should examine witnesses ; the Court thinks you are at liberty to have the names of the witnesses entered on the minutes of the proceedings, and to say, that having proposed to call them, the Court were perfectly satisfied, and did not think it necessary."

Sir HOME then drew up the following statement, which was inserted in the minutes :

" In consequence of the intimation of the Court yesterday, that it would be unnecessary for me to confirm the evidence of Capt. King

by that of Capt. Edmonds, who commanded the *Diomedé* at the Cape and the *Rio de la Plata*, I do not call the latter officer.

"I had summoned Capt. Parker to prove my disinterested conduct after the capture of Buenos Ayres, but as the Court has also deemed that unnecessary, I do not call that officer.

"Mr. M'Lean was secretary, and the confidential friend and executor of Admiral Christian. He is ready to produce the various papers upon the proposed attack on the Spanish settlements in the *Rio de la Plata*, in the year 1798, but which the Court deeming irrelevant, I do not press upon them.

"Mr. Madden can prove my letters to Admiral Stirling and the Governor of Monte Video, read in my defence; and also the whole of my correspondence with each, if thought necessary.

"Captain Dundas having also to speak to a precedent only, I will not trouble the Court to call upon him."

When the paper was read, Sir Home resumed:

"The nature of the testimony which I had it in my power to obtain from the gentlemen mentioned in the paper, which the Court has just heard, naturally suggests to me the propriety of submitting a few observations, for the last time, on the learned prosecutor's, frequently repeated remarks upon the Law of Evidence. The learned gentleman thought proper yesterday to reject the authority of Dr. Tytler, possibly because the opinion of that respectable writer is at war with his judgment. His rejection of Dr. Tytler, however, has induced me to make some farther enquiry, to which I was readily inclined, because I am ever anxious to ascertain the genuine character of any opinion which I hold, and pre-



ticularly when the propriety of that opinion is questioned, although warranted by all that I had ever heard or read of upon the question referred to—and still more because I happened to differ from a learned gentleman of high rank in his profession, which rank I must naturally conclude, he owes to his great merits. But the result of my enquiries has not been such as to justify the doubts I had of my own opinion, or the deference I entertained for that of the learned gentleman; for I find not only the greatest authority in the law, but the precedents of courts-martial, are against him.

“The general rule which runs through all the doctrine of trials (as laid down by Blackstone in his Com. vol. iii. p. 368) is this, ‘That the best evidence the nature of the case will admit of, shall always be required if possible to be had; but if not possible, then that the best evidence that can be had shall be allowed. Thus, in order to prove letters or writings, nothing shall be admitted but the very letters or writings themselves if in being; but if burnt or destroyed, then an attested copy may be produced, or parole evidence given of their contents.

“The rules of evidence being founded upon the immutable principles of justice, and established for the discovery of truth, can never vary with the forms and jurisdiction of courts; and the practice of the courts of common law in England, not only upon the footing of authority, but on principles of wisdom, is the standard for all courts, civil, naval, or military, to resort to in matters of testimony; and of which practice the learned prosecutor has given proofs of his ability and ingenuity on my trial.

“I have learned much on the doctrine of evidence by the various objections made in the

course of this trial by my learned prosecutor, and by following his example yesterday on this trial, who, on cross examination of my witnesses, put questions, not to the *fact*, but merely as the belief or opinion of the witnesses. The Court may recollect that I availed myself of the indulgence I conceived granted to the learned prosecutor, by stating in my turn a few questions of opinion to Capt. King, which tended to invalidate what he, the learned prosecutor, had previously and so ingeniously put to him on cross-examination. I now find by M'Nally's Rules of Evidence, p. 262, that the learned prosecutor was justifiable in this proceeding, and that the party accused can also avail himself of a similar privilege; and that professional men in particular may be examined to the best of their skill and knowledge, we have precedents on the trials of Admiral Keppel and Sir Hugh Paliser of such examination. By such law and such precedents, I was influenced in my proposition to bring forward some of the witnesses I had enumerated, and particularly Capt. Dundas and Mr. M'Lean; but I will not pursue this subject further. I have now to request the permission of the Court to deliver in several papers, some of which have already been read in the course of my defence: but still there are a few which form strong documentary evidence for my justification; and for sustaining the statements I have submitted, which I wish much to appear on this trial, I trust that all the communications between the Board of Admiralty and myself will be admitted as evidence." Sir Home then delivered in the following list of papers, which was read:

- No. 1. (A).—The Proclamation of War against Spain, dated 11th January, 1805.
- No. 1. (B).—Order of the Lords of the Admiralty, dated 31st July, 1805, for Sir Home Popham hoisting a broad pendant on quitting Madeira.
- No. 2.—Order of same date for holding Courts-Martial. Admiral Stirling had at his desire a Copy of this Order in the Rio de la Plata, not having had any such authority delegated to him.
- No. 3.—A Letter from the Secret Committee of the East India Company to the Governor and Council of St. Helena, dated 26th July, 1806, desiring them to afford every aid in their power in any operation in which they might be required to assist by General Sir David Baird and Sir Home Popham.
- No. 4.—A Letter from Mr. Barrow, dated 2d August, 1805, which accompanied the order of that date, read on the part of the prosecution.
- No. 5.—Letter from Mr. Marsden, dated 1st March, 1806, acknowledging the receipt of Sir Home Popham's dispatches, giving an account of the capture of the Cape.
- No. 6.—Letter from Mr. Marsden, dated 27th March, 1806, approving of Capt. Donnelly's driving on shore the Napoleon, French privateer.
- No. 7.—A Letter from the Governor-General and Council in India to Sir Home Popham, on the capture of the Cape.
- Nos. 8 and 9.—Two Letters from Sir Home Popham to Mr. Marsden, dated from the Cape, the 7th and 20th March, 1806: these letters fill up the vacuum in that part of the correspondence left by the prosecutor's evidence.
- No. 10.—The Conditional Order left at the Cape for ships that might arrive there in the absence of the Commodore.

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No. 1. (A).—See Cobbet's Register.

No. 1. (B).—See Appendix, not E.

No. 2.—Idem note F.

No. 3.—Idem note G.

Nos. 4, 5, 6, 7, 8, 9, 10.—Inserted in the minutes. See the defence, and the letters which are annexed to it.

- No. 11.**—The principal Letter to Mr. Marsden of the 30th April, 1806, containing the detailed account of the intended proceedings of the squadron. This letter inclosed a copy of the memoir prepared with General Miranda, which it is submitted should not be read, but inspected by the Court.
- No. 12.**—A Letter from General Baird, dated 27th May, 1806, to the Right Hon. William Windham, confirming the general tranquillity of India.
- No. 13.**—Order of the Lords Commissioners of the Admiralty, addressed to Commodore Sir Home Popham, dated 28th July, 1806, requiring him to return forthwith to England, and directing him to furnish Admiral Stirling with every information in his power relative to the services in which the Commodore had been employed, as well at the Cape as on the coast of South America.
- No. 14.**—A Letter from Mr. Marsden, acknowledging the receipt of Sir Home Popham's letter from the Cape of the 9th April, announcing the intended proceeding of the squadron to the Rio de la Plata.
- No. 15.**—A Letter from Lord Barham, in answer to one from Sir Home Popham, which communicated to his lordship the intended expedition against the Spanish settlements on the east coast of South America.
- No. 16.**—The Gazette Letter from Sir Home Popham to Mr. Marsden, announcing the capture of Buenos Ayres.
- No. 17.**—A Letter from Mr. Marsden, dated the 25th of September, 1806, addressed to Commodore Sir Home Popham, by the Ardent, expressing their lordships' entire approbation of the judicious, able, and spirited conduct manifested by the commodore, and the officers, seamen, and marines, under his orders, on the surrender of the city of Buenos Ayres to his Majesty's arms.

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**No. 11.**—Appendix, note B.

**No. 12, 13, 14.**—Read in the defence by Sir Home, and inserted on the minutes.

**No. 15.**—Not inserted in the minutes but see it in Sir Home's defence,

**No. 16.**—See the London Gazette.

**No. 17.**—on the minutes.

No. 18.—A Letter from Mr. Marsden, dated the 23d of September, 1806 ; also by the Ardent, inclosing the copy of the proclamation issued by his Majesty on the 17th of September, regulating the trade of Buenos Ayres and its dependencies, together with the Gazette in which it was published.

No. 19.—Another Letter from Mr. Marsden, dated the 25th of September, 1806 ; also by the Ardent, inclosing a copy of the instructions given to General Achmuty, when sent out for the reinforcement of General Beresford.

No. 20.—The actual Letter written by Sir Home Popham to Mr. Marsden, on the recapture of Buenos Ayres, and the capture of Maldonado.

No. 21.—The mutilated publication of that letter in the Gazette.

No. 22.—A Letter to the Governor of Monte Video dated the 19th of September, 1806, on the non-observance of the articles of capitulation, on the surrender of General Beresford and his army.

No. 23.—A Letter from Sir Home Popham to Admiral Stirling, dated 3d December, 1806, offering his services to the Admiral in any way he might chuse to employ him in the Rio de la Plata.

No. 24.—Letter from Mr. Marsden, dated 28th February, 1807, admitting Sir Home Popham's Letter of the 30th April, 1806, to have been received at the Admiralty the 24th of June following.

No. 25.—Note from Lord Lauderdale to Mons. Talleyrand, dated Paris, September 19th, 1806.

No. 18.—See Appendix, note H.

No. 19.—The substance of the instructions so far as Sir Home Popham deemed it material, appears in the defence. He is unwilling from public motives to give publicity to the remainder.

Nos. 20, 21.—See Appendix, note D.

No. 22.—Idem, note C.

No. 23.—Not inserted in the minutes, but read by Sir Home Popham in his defence.—See page 152.

No. 24.—Inserted in the minutes.

No. 25.—See Appendix, note I.

No. 26.—Letter from the Secretary of the Admiralty to the Deputy Judge-Advocate, dated the 6th March, 1807, inclosing one of the same date from Sir Francis Vincent, written by order of Lord Howick, his Majesty's Secretary of State for Foreign Affairs; with a copy of a letter from Lord Grenville to Sir Home Popham, dated the 19th November, 1797.

PRESIDENT—“ Do you mean that these documents should form a part of the proceedings of the Court, and be taken down in the minutes accordingly, because I think that most of them are wholly irrelevant to the charge we are trying?”

SIR HOME POPHAM—“ Such, Sir, with great deference, is my wish, and I apprehend that I am justified in the application by precedent; while, if I am correctly informed, there is no precedent whatever, that should excite a fear of its rejection. My motive for the production of these papers is to acquit my character, and to remove every injurious impression which the reflections propagated against it, particularly in my absence from the country, are calculated and evidently designed to produce. To defeat such slanderous views, I feel confident that it will be sufficient to make my case fully known;—that therefore, is my object, and to warrant my pursuit of it, I refer to the precedent of Admiral Keppel. That officer, after he had closed his defence, desired the letters in the possession of the Court might be read, to prove that there was no material circumstance he would keep from the public; and they were read accordingly. These papers were the Admiral's letters to the Secretary of the Admiralty, which contained cir-

circumstances illustrative of the charge: and the letters from the Secretary to Admiral Keppel were also read, expressing his Majesty's approbation of his conduct, and the congratulations of the Admiralty Board, on his victory over the French fleet.

" Having stated these precedents, which are, in my opinion, quite analogous to the request I now make, I humbly trust the Court will allow me the same privilege."

The PRESIDENT—" Many of these papers are wholly irrelevant: all those respecting the proceedings at Buenos Ayres are totally distinct from the matters of the charge; and you will recollect that any reflection which may have been made in the House of Commons, or elsewhere, upon your conduct, *can have no influence upon our minds*; every thing that can be admitted in your behalf, I have no doubt will have its due weight."

Sir HOME POPHAM—" I leave it entirely to the Court to determine. My private feelings have been very severely wounded, and both my private and public character grossly misrepresented. Charges have been advanced against my general character; and I did hope that this honourable Court would allow me to adduce some testimonies to my general conduct, which should rebut these charges. *Perhaps it is expected by my enemies* that the particular accusation before you may serve to afford some countenance to the unworthy imputations attempted to be affixed to my motive of action. But in order to shew that I am not likely to be influenced by such motives—that I am not unwilling to forego any personal interest for the public service, I beg that the letter (No. 26) may be read. One of the inclosures in that letter will

shew that I had no reason to apprehend censure, or that my exercise of discretionary power would have been disapproved of by the present prime minister of England."

Admiral STANHOPE—"Surely it is very proper these papers should be read. I think there can but be one opinion on the subject."

The letters in No. 26 were here read (excepting Lord Grenville's, to the reading of which letter the President objected), but not allowed to be inserted in the minutes (see them in note M. of the Appendix.)

Sir HOME POPEHAM then addressed the Court in the following terms:—"I here close my defence, and I throw myself upon the wisdom and justice of this Honourable Court. My feelings and my character have suffered severely; but I trust to your judgment to relieve the one and rescue the other. If I have, in the exercise of my zeal, exceeded the strictest bounds of discretion, I hope it will be evident that I have been actuated solely by a desire to advance the honour, the glory, and the interest of my country. In the prosecution of those great objects, aided by my gallant followers, and fostered by the superintending hand of Providence, it has been my good fortune to be put in possession of the two capitals of two quarters of the globe; and I trust it will be found, upon a close examination of my defence, that

"The very head and front of my offending  
"Hath this extent—no more."

The Court was then (about half past ten o'clock) ordered to be cleared, and the Members remained in deliberation until three.

Upon the re-admission of strangers, the Judge Advocate read the sentence, which, after the



usual preamble, stating the time at which the court-martial commenced, the names of the members, and the charge against the prisoner, &c. concluded in the following terms:—

“THE Court having maturely considered the nature of the charges, heard all the evidence, and having fully deliberated upon the whole of this case, are of opinion, that the charges have been proved against the said Captain Sir Home Popham; that the withdrawing, without orders so to do, the whole of any naval force from the place where it is directed to be employed, and the employing it in distant operations against the enemy, more especially if the success of such operations should be likely to prevent its speedy return, may be attended with the most serious inconvenience to the public service; as the success of any plan formed by his Majesty’s ministers, for operations against the enemy, in which such naval force might be included, may, by such removal, be entirely prevented;—and the Court is further of opinion, that the conduct of the said Captain Sir Home Popham, in the withdrawing the whole of the naval force, under his command, from the Cape of Good Hope, and the proceeding with it to the Rio de la Plata, was highly censurable;—but, in consideration of circumstances, the Court doth adjudge him **TO BE ONLY SEVERELY REPRI-MANDED**—And he is accordingly hereby severely reprimanded.”

The Provost Marshal than proceeded to the President, and presented to him, the sword of Sir Home Popham when he was ordered to return it. The Provost Marshal returned to the bottom of the table, and, with a respectful salutation, returned the sword to Sir Home Popham, and the Court was dissolved.

## APPENDIX.



### Note A.

*Report from a Committee of the House of Commons in the  
Sessions of 1805.*

**T**HE SELECT COMMITTEE, to whom the several papers presented to this House, relating to the repairs of His Majesty's ships the Romney and Sensible, while under the command of Sir Home Popham, were referred, to examine into the several matters contained therein, relative to the said repairs, and to the proceedings of the Admiralty and Navy Boards, and of the Commissioners of Naval Inquiry thereupon; and also to inquire into the circumstances attending the publication of the Report of the Navy Board, dated 20th February 1804; and into the loss of certain vouchers and documents on which that report was founded; and also into the circumstances attending the impressing of Mr. David Ewen Bartholomew; and to report the same, together with their proceedings and observations thereupon, from time to time, to the House; and who were empowered to examine into the expenditure and purchase of all stores for the use of the said ships; have, pursuant to the order of the House, examined accordingly, and have agreed to the following Report:

Your Committee, having taken into consideration that part of the reference which relates to the repairs and

## APPENDIX.

stores of the Romney and Sensible, find, from the papers referred to them, and the evidence they have received, that there does not appear any ground whatever to impute to Sir Home Popham any fraud, or connivance at any fraudulent or corrupt practice whatsoever.

With respect to the Sensible, your Committee observe that Sir Home Popham appears to have ordered that ship to proceed to Calcutta, from the Red Sea (instead of sending her to be repaired at Bombay), for the purpose of furnishing a convoy to several transports and merchantmen, bound to Bengal; that he gave to her commanding-officer, Captain Sause, at Calcutta, orders, dated 11th October 1801, "to use his utmost exertions to repair the said ship, and to complete her with six months' stores;" and that, Captain Sause having never rejoined him after the execution of those orders, Sir Home Popham cannot be considered answerable for the manner in which they were executed. Your Committee do not mean, by this remark, to impute any blame to Captain Sause; not having considered any transaction relating to the Sensible as the subject of the reference made to them, further than as such transaction could be connected with the conduct of Sir Home Popham.

Your Committee observe that Sir Home Popham appears to have gone on shore from the Romney, a few days after her arrival in the river Hoogley, in August 1801, and before her arrival at Mayapour, and to have proceeded up the country, in compliance with the desire of Marquis Wellesley (with whom he was specially directed by his instructions to communicate), for the purpose of conferring with his Lordship, concerning certain great objects then in contemplation, in which Marquis Wellesley required his advice and assistance; that he left that ship under the command of the First Lieutenant, Mr. Davis, an officer in whose integrity and knowledge of the service he

## APPENDIX.

states himself to have had the utmost confidence, and that he did not return on board the Romney till after that ship had sailed from Mayapour. It appears, therefore, to your Committee, that, if the sails and stores of the Romney, sent on shore at Calcutta, were not regularly surveyed, before they were condemned (a point which your Committee, owing to the circumstances of the ship having no Master, and the Boatswain being sick at the time, and of Mr. Davis, the First Lieutenant, being now absent from England, are not able correctly to ascertain), the blame of such irregularity is not to be imputed to Sir Home Popham; and, in support of this observation, your Committee beg leave particularly to refer to the evidence of Captain Bowen.

Your Committee find that the quantity of stores, demanded by Sir Home Popham, while the Romney was under repair, and supplied by Mr. Louis, who had been previously appointed, by Admiral Rainier, His Majesty's Deputy Naval Officer at Calcutta, exceeded the quantity allowed for a twelvemonth's expenditure, estimating that quantity according to the calculation made in His Majesty's Dock-yards, and mentioned in the Report of the Navy Board of the 20th of February 1804; but that Sir Home Popham has accounted for this circumstance, by stating, that he did not confine his demand to a provision of stores for any particular period, but took on board as large a supply as the ship could conveniently carry; having a view in demanding such stores to the probable exigencies of the service upon which he expected to be employed.

Your Committee find that Sir Home Popham, in addition to the sails which were allowed by the establishment of the navy, ordered several to be made and supplied for the use of the Romney, which were not authorized by the strict rules of the service; but it appears to your Committee,

## APPENDIX.

from the concurrent testimony of several persons examined on the subject, and particularly from that of Captain Mason, who speaks from experiments made under his own observation, that those extra sails were highly advantageous in the Indian seas.

Your Committee have not thought proper to state, in this Report, some other instances in which Sir Home Popham appears to have deviated from the strict rules of the service, by directing the Naval Officer to supply him with articles for the use of the Romney, which are described in the evidence, and were not conformable to the usages of the navy; such irregularities appearing to your Committee to be wholly unworthy of parliamentary attention, or of any other notice, but that which, of course, they ought to have received, according to the custom of the service, in the consideration of Sir Home Popham's accounts, when any extra charge would be disallowed, unless deemed to have been expedient under the circumstances of each particular case.

Your Committee, however, think themselves called upon, in strict justice to Sir Home Popham, distinctly to state that they have not met with any instance, in effecting the repairs, or in the supply or expenditure of stores, which has been attended with any personal advantage or emolument to himself. Nor have your Committee the least reason to suspect, from the evidence before them, that his conduct upon any occasion, in which the rules of the navy have not been rigidly observed, was influenced by any private consideration; but, on the contrary, your Committee feel it to be their duty to observe, that Sir Home Popham appears to have been actuated by no other motive, but that of an ardent zeal for the public service.

Your Committee do not think it necessary to state their observations in detail, upon all the points mentioned in the Report of the Navy Board of the 20th of February 1804;

## APPENDIX.

conceiving that as far as relates to Sir Home Popham that document appears to them to be materially inaccurate.

Your Committee observe that Sir Home Popham appears to have used his utmost endeavours to obtain money for drafts on England, upon the most favourable terms, for the expenses of the squadron under his command.

Your Committee have thought it their duty, in justice to the character of a meritorious officer (who, so far from encouraging or conniving at any public waste, appears in evidence, before your Committee, to have effected very considerable savings), to make a Special Report on the circumstances of his case; being the first head of their inquiry; though the evidence on which their Report is founded, is so blended with that which relates to the other particulars referred to them, that they must postpone reporting that evidence, until the other heads of inquiry are also brought to a conclusion.

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### Note B.

[This letter contains the main points of the Memoir which, as appears from Lord Melville's evidence, was drawn up by Sir Home Popham, at the request of that noble Lord, for the purpose of informing Mr. Pitt and his Lordship upon the subject of South America. The motive which led to the omission of this letter in the charge, and the insertion of that which appears as *the letter of the 30th April*, has been already observed upon. That motive will indeed be obvious from a consideration of the lines marked in *italics*, and the delay which took place in sending out reinforcements to Buenos Ayres.]

*To William Marsden, Esq. &c. &c. &c.*

SIR, Diadem, St. Helena Bay, 30th April, 1806.

IN consequence of my having borne up for St. Helena, as mentioned in my letter of this date, and a Company's

## APPENDIX.

packet giving me the opportunity of a safe conveyance to write on the subject of Rio de la Plata, I deem it right to trouble you with this letter for their Lordships' information.

To satisfy their Lordships, in the first instance, that this project has not arisen from any sudden impulse, or the immediate desire of gratifying an adventurous spirit, I take the liberty of transmitting for your perusal the copy of a paper which I wrote by the desire of Lord Melville when he was at the board of Admiralty, after having previously had a conference with Mr. Pitt and his Lordship on that subject.

You will observe, sir, that the paper in question holds out, under certain combinations, some prospect of a general emancipation in South America; and that the great organ of action in this undertaking is General Miranda, who is now in London.

Rio de la Plata is one of the points proposed to be attacked, and was considered more a military position than one of absolute negotiation; though considerable dependance was placed on the effect which a successful issue in other places might have had in that respect.

If, therefore, such an enterprise, on general grounds of advantage to the kingdom, has been so long in agitation by different cabinets, I have reason to conclude that no formidable objection has ever existed, either to the principle or policy of the measure.

I am aware that much has been said on the expediency of foreign territorial acquisition, taken simply as a conquest; but the arguments have been applied to situations without commercial resources, and which were exceedingly remote from the inspection or intercourse of the mother country.

In the present expedition no such objections exist: the destination of it is contiguous to that important colony the Cape of Good Hope; and if the possession of Monte

## APPENDIX.

Video and Buenos Ayres be not absolutely necessary to its existence, it will be materially conducive to its prosperity and advantage. Were I only, on this calculation, to consider the importation of corn to the Cape, I trust in that article alone the beneficial consequences, even speculatively taken, will far exceed any risk, or expence, that can be fairly said to attach to this enterprise.

This, sir, is the least important consideration : and if the records of the Admiralty were to be examined, or the still better evidence, the living testimonies of the merchants of London resorted to, you will, I have no doubt, find, that Buenos Ayres is the best commercial situation in South America. It is the grand centre and emporium of the trade of all its provinces, and is the channel through which a great proportion of the wealth of the kingdom of Chili and Peru annually passes.

These advantages have been so strongly urged in a provincial weekly publication, of which I am in possession, that the Spanish government was obliged to interfere and stop its further progress ; as it was evidently written to invite foreign protection, and to induce Great Britain to profit by the neglected state in which those valuable colonies were left by the mother country.

The productions, according to this statement, exclusive of gold, silver, and precious stones, are—cocoa, indigo, cochineal, copper, wool, hemp, hair, wheat, gums, drugs, horns, besides hides and tallow, which I consider to be the great staple. It appears also, by the work already quoted (the Mercantile Telegraph of Buenos Ayres), that about six hundred coasters enter inwards annually at Monte Video, and one hundred and thirty European ships ; and about the same number clear outwards ; but in this commercial intercourse the exactions, duties, and restrictions, are so arbitrary, that the natives are in a state not many removes from open revolt.



## APPENDIX.

I have hitherto dwelt principally on the export trade of these colonies, which enjoys all the advantages of easy transport by the Paraguay and other fine rivers that are navigable several hundred miles from Buenos Ayres.

These advantages apply also to the importation of manufactures from Great Britain: and when we consider that at least six million of inhabitants are within the reach of such a supply, I do presume to submit whether even a temporary encouragement to our manufacturing towns, under such prospects of benefit as are eventually held out, be not sufficient to justify the attempt in agitation, even under a less favourable promise of success.

I know, sir, that, in ordinary cases, the opening a new channel for the consumption of our manufactures is not only a measure of extreme policy to the state, but of equal popularity to the existing government of the country. And although it may be urged that an officer has nothing to do with the latter consideration, yet I cannot admit the principle, until I hear it confirmed by a paramount authority.

It may also be thought that I have, in some respects, exceeded the bounds of discretion which are vested in a commanding officer: if, however, I have given too liberal a construction to that power, I have done so because I thought it would essentially serve my country; and I have had the satisfaction of obtaining, by manifest demonstration of probable benefits, the concurrence of Lieutenant-general Sir David Baird in the policy of this measure, followed up by the co-operation of a detachment of his army under Brigadier-general Beresford.

Viewing this project in the most limited way, I trust I shall not be thought too arrogant if, in addition to the prospect of advantage which may appear likely to result from its successful issue, I add, that it may be considered as an equivalent of some moment on any pacific negotia-

## APPENDIX.

tion: and it will be the means of totally preventing the enemy during the war from enjoying the benefit of its valuable productions, which it does now to the greatest extent, by the systematic intervention of neutral flags.

Taking, however, a more enlarged view, and such an one as would be justified by the favourable reception which the inclosed Memoir has received from His Majesty's ministers, I must consider the benefits of the position in question as incalculable in its relation of assistance to General Miranda's plan, through the province of St. Fé de Bagota and the Caraccas. If it should, at this period of the war, and under the general derangement of our allies on the Continent, be thought expedient to prosecute this scheme, either to obtain a balance of foreign territory against the continental aggrandisement of the French government, or to cut off those resources which it derives through Spain from South America, then I trust the measure I am about to carry into execution will be approved, as laying a successful foundation for that great enterprise.

General Miranda, if not already sailed, is, I conclude, in a state of readiness to proceed to Trinidad and the Caraccas without a moment's loss of time; and the small military force which he requires will, I trust, bear scarce any degree of comparison to the probable ulterior benefits of its application in South America.

It is necessary to observe, that, in consequence of bearing up to St. Helena, an additional force has been obtained of one hundred and fifty infantry, and one hundred artillery; consequently we shall leave this with the 71st regiment (750), and twenty-five artillery; one hundred and fifty St. Helena infantry, one hundred artillery: and in the first instance we shall be able to land about eight hundred men from the fleet.

It may now probably be right that I should give the most concise account possible of the information I have.

## APPENDIX.

received of the state and defense of the enemy's possessions in La Plata.

In addition to and corroboration of all the intelligence I obtained last war, Mr. Wilson, an eminent merchant of the city of London, informed me, a few days before I left town, and which communication I made to Mr. Pitt, that Monte Video was very defenseless,—that a thousand men would easily obtain possession of the place, and Buenos Ayres, which is an open town;—that after the Spanish troops were sent from the country, the natives would easily keep possession of it, under an amelioration of their export and import duties, and of some other heavy and oppressive taxes.

At St. Salvadore, where there is a continual intercourse with La Plata, we obtained information similar to that already mentioned: and an Englishman who had been eleven months a ship-carpenter at Monte Video, and only just arrived there in a Spanish vessel, has, under every kind of cross-examination, adhered without variation to this account;—that there are not above two hundred and fifty regular troops at Monte Video, with some provincial cavalry and militia; that the walls of the town are in a ruinous state; and that he believes the inhabitants would force a surrender without firing a shot.

The letter from Mr. Waine, master of the Elizabeth American ship, conveys his sentiments; and he is now on board the Diadem.

There is also an Englishman, who was taken by the Polyphemus, who had been a resident eight years at Buenos Ayres, and two of which he was interpreter to the Custom-house: his information is much the same as the preceding person with respect to Monte Video, and more positive as to Buenos Ayres, which is an open town. He asserts, that there never were a thousand regular troops at Buenos Ayres, while he was there;—that at this moment he

## APPENDIX.

does not conceive that there are six hundred in both places; and that the disposition of the inhabitants is so averse to their existing government, that they will materially assist in the conquest of the place.

We have many other similar testimonies of its military weakness, and its political disaffection. Under such information, therefore, we may presume on success; and if it is to be commanded by the physical amount of our force, we may look forward with pleasure to the issue, from its zeal, energy, and spirit.

There can be no idea of moving a man into the country. The object will be to gain that by negotiation, and the offer of a liberal trade. We shall make Monte Video, which is the key of the river, as strong as possible, till some reinforcements arrive from Europe: and we can only hope, that if *it be possible to spare two regiments, they will be sent without loss of time in fast-sailing ships.* Every expedient that I possess shall be adopted to create a diversion, on the merits of such intelligence as I may receive after we are in possession of the place.

The expedition will sail to-morrow evening, and we calculate on four weeks' passage. But I trust that this small armament will only be considered as a floating force to keep up the national characteristic enterprise, and ready to apply to any point of the enemy's possessions which have been neglected, provided there is every moral certainty of success, and no risk beyond that of common calculation under such circumstances.

I have the honour to be,

Sir,

&c. &c. &c.

(Signed) HOME POPIHAM.

[A duplicate of this letter was forwarded by Sir Home Popham to Lord Castlereagh, as Secretary of State for the

## APPENDIX.

War and Colonial department, with the following preface :—

“ My Lord,

“ Although I am aware that it would be thought irregular to make an official report to your Lordship on any military operation, yet I consider it perfectly within the usages that have generally obtained to lay before your Lordship all the information I possess on the subject of South America ; and at the same time to submit the reasons which induce me to undertake the expedition to the Rio de la Plata,” &c. &c.

Both these letters were received at the same time, namely, on the 24th June.]

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### Note C.

[The parts omitted in the Gazette are marked with turned commas. The motive for these omissions we shall not presume to state: but one effect which they were calculated to produce, was a jealousy between Sir Home Popham and General Beresford. The same effect might have been produced between Sir Home and Sir David Baird ; as one part of the charge, on the late court-martial, was attempted to be proved by a letter from Sir David Baird to the Secretary of State on the subject of the *Cannoniere*, which was drawn from the archives in Downing-street, while the Admiralty was in possession of a letter on the same subject from Captain Styles, of the *Adamant*, which letter it had previously published, contrary to the general practice, in order to prejudice the public against Sir Home Popham.]

*Sir Home Popham to W. Marsden, Esq. dated—Diadem,  
Rio de la Plata, 25th August, 1806.*

WHEN the events of war cease to be favourable to any armament, I consider it the duty of commanding officers

## APPENDIX.

to state all the circumstances, within their knowledge or information, with clearness and perspicuity, which, either progressively or suddenly, led to a reverse of fortune.

In pursuing this course, I feel confident I shall be able to satisfy the Lords Commissioners of the Admiralty that the liberal and beneficent principles upon which the government of General Beresford was conducted, do more honour to His Majesty's arms, and the character of Great Britain, than if he had resorted to expedients completely within his power, which would have effectually annihilated all the efforts of the enemy, and wrested, probably for ever, these countries from the crown of Spain.

" On the other hand, the repossession of Buenos Ayres  
" has been stained with such deliberate acts of treachery  
" and perfidy, as are not to be instanced in the annals of  
" history; and which will, I hope, in future, be an evidence to every British officer, how little dependence there  
" is to be placed in the most sacred treaty made with a  
" Spaniard.

" The terms of the Convention were signed on the  
" 2d July, after being minutely discussed in the Cabildo  
" by the late commander in chief of His Most Catholic  
" Majesty's forces, by all the law officers, by the ecclesiastical delegates, and by the representatives of the people—  
" were received, when promulgated, with the strongest apparent demonstrations of joy; and no persons more conspicuously marked their gratitude, than the men who, in violation of their faith, were the principal conspirators, in betraying a government they had so lately assisted to establish and confirm.

" The object of this expedition was considered by the natives to apply principally to their independence; by the blacks, to their total liberation: and if General Beresford had felt himself authorized, or justified, in confirming either of these propositions, no exertions what-

## APPENDIX.

"ever would have been made to dispossess him of his conquest.

"The latter idea created a very serious alarm; and" Pueridon [one of the municipality], "who appears to have been the greatest organ of the revolution, and was certainly the most prominent in framing the Convention, called my particular interest to the desperate situation of the country, if some steps were not immediately taken to suppress the delusion of the slaves: he had personally felt the evil consequences of the prevailing opinion, and dreaded how much they could be increased by the most trifling delay.

"On this representation, General Beresford lost no time in issuing a Proclamation, which, by its effect, completely quieted the apprehensions of the town.

"It being now evident that the independence of America could not be declared; that the inhabitants might command the protection of his Majesty's government against the insults of their slaves, of which, no doubt, they profited in various ways to our prejudice; and that the military principles of the General were too high to enter into any negotiation with the Indians, who must traditionally remember the extreme perfidy of their first invaders; Pueridon" applied himself with great art and address, in preparing the people for a general insurrection.

The arms of the town were secreted, ready for the moment of action; the discontented assembled every night, and attended to his instructions; and he raised all the rabble of the country, by the ample supplies of money with which he was furnished.

On the north side of the river, Colonel Liniers, a French officer, in the Spanish service, and on his parole, successfully employed himself in collecting people at Colonia. "This person, previous to the violation of his honour, frequently called on me, to excite my commiseration for a large

## APPENDIX.

“ and indigent family ; inveighing, in the most bitter terms,  
“ against the treatment he had received from the Spanish  
“ government ; renouncing all intention to serve again ;  
“ and soliciting my protection to him as a merchant, which  
“ he considered to be the only line that promised him a  
“ livelihood for his children.

“ To these instances of a breach of faith, I might add  
“ almost every Spanish officer who had signed his parole ;  
“ and one had so little sense of shame, that he was the first  
“ to come on board the Diadem with the account of this  
“ infamous and perfidious transaction, although he knew I  
“ was in possession of his specific signature to all the en-  
“ gagements, as a prisoner of war.

“ The church was not less forward in its countenance  
“ and correspondence, and, I believe, practical assistance :  
“ in short, sir, there was an atrocious and perfidious vio-  
“ lation of that faith which the law of nations declared to  
“ be sacred.”

Terror was established ; and every person who refused to  
contribute his assistance to this conspiracy, was threatened  
with immediate death.

I have traced this from very unquestionable authority ;  
and so rapid was the progress of the revolution, when it  
first shewed itself, that it was not till the 31st July that I  
learnt, by a dispatch from the General, which reached me  
at Ensenada, on my return from Monte Video, that he  
was apprehensive, from the information he received, an  
insurrection would shortly take place.

“ I heard, at the same time, from Captain Thomson,  
“ that seventeen of the enemy's vessels had just arrived at  
“ Colonia ; and as it was reported that force was still to be  
“ [considerably] increased from Monte Video, I sent or-  
“ ders for the Diomedé to be brought to Ensenada, and for  
“ Captain King of the Diadem to come up with the remain-  
“ ing few marines, the two companies of Blues, and an



## APPENDIX.

“ many other men as could in any degree be spared from  
“ the ships, for the purpose of arming some vessels to attack  
“ the enemy at Colonia, as it was impossible to prevent his  
“ crossing from [some part of] the north shore, whenever  
“ the wind was fair.”

On the 1st of August, in the afternoon, the *Leda* anchored off Buenos Ayres, about twelve miles distance: and on my landing on the 2d, which I did as soon as the weather would admit of a boat getting on shore, I found the General had, with 500 men, just made a very successful attack on about 1500 Spaniards, under Pueridon, five leagues from the town, in which he took all the enemy's cannon, I think nine pieces, and several prisoners.

On the 3d, I attempted to return to the *Leda*, in the *Encounter*, which Captain Honyman brought within a few miles of the shore for the purpose, as it blew very strong; but the wind freshened so considerably from the eastward, that we could not get to windward.

On the 14th, in the morning, it was very thick weather, and the gale increased so much, that it was impossible to weigh.

About noon, Captain King arrived, in a galliot, with 150 men from the *Diadem*, for the purpose of arming and commanding the few small vessels we had collected in the harbour, but he was not able to get there till the following day.

“ On the 5th, in the morning, it moderated, and I  
“ reached the *Leda*; when I received a report from  
“ Captain Thomson, that in the gale of the preceding day  
“ the enemy had crossed [over] from Colonia, totally  
“ unobserved by any of our ships, except the schooner  
“ under the command of Lieutenant Herrick, who was  
“ lying in the narrow gateway leading to Conchas and St.  
“ Isidore; but the easterly wind had thrown so much  
“ water in the river, that the enemy's [vessels] were

## APPENDIX.

“ enabled to cross over any part of the Palma’s bank,  
“ without the necessity of making a greater detour by  
“ going higher up the river.

“ On the 6th and 7th, it blew a hurricane : the Leda  
“ was lying in four fathoms, with two anchors down, and  
“ her yards and topmasts struck.

“ On the 8th, I heard from Captain King [whose report  
“ of his transactions between the 5th and 12th I have the  
“ honour to inclose] that five of our gun-boats had foundered  
“ at their anchors ; that the Walker had lost her  
“ rudder ; and that the launches and large cutters of the  
“ Diadem and Leda were lost.”

The torrents of rain that fell during the 6th, 7th, and 8th, had rendered the roads totally impassable for any thing but cavalry ; and consequently General Beresford was most seriously disappointed in his determination to attack the enemy at a distance from the town ; in which, had it taken place, I entertain no doubt that this army would have evinced another trait of its invincible spirit, under his dispositions. The enemy, however, by his inexhaustible supply of horses, suffered little inconvenience from the state of the roads ; and he was therefore enabled to approach the town by several directions, without giving the British army any opportunity to attack him.

On the 10th, in the evening, the castle was summoned ; and on the following day I landed, while our remaining [armed] vessels were firing on the Spanish posts ; and I learnt that, exclusive of the Spanish army, which was divided into many columns, occupying the various avenues of the town, the inhabitants were all armed, and sheltered on the tops of the houses and churches, with the design of carrying on a war of ambush.

Under these circumstances, and the manifest disposition

## APPENDIX.

of the enemy to prevent an engagement, it was determined to embark the wounded that night, and cross the Rio Chello, for the purpose of moving towards Ensenada. But this measure was in a great degree frustrated by the weather, which became very violent during the night, and consequently retarded the progress of embarkation. The enemy added a considerable number of men to the houses and churches near the castle, and advanced by all the streets not under the influence of our fire; in short, sir, his object was, to avoid by every means a general action, and to place his men in such a situation that they could fire at our troops, while they remained in perfect security themselves.

On the 12th, at day-light, I understand a smart fire began from the enemy's advanced posts, but was soon returned with great effect by our artillery, which was planted towards the principal streets leading to the great squares; and for a short time the enemy, by his immense numbers, shewed a greater degree of firmness than on any other occasion, and pushed forward with three pieces of artillery, which Colonel Park of the 31st soon charged and took from him. During this time, however, reinforcements crowded the tops of all the houses commanding the great square from the back streets, and our troops were soon considerably annoyed by people they could not get at. The enemy commanded the castle in the same way, with the additional advantage of a gun on the top of one of the churches, which I consider an indelible stigma upon the character of the bishop, not only from his situation, but from the professions he made.

I can easily conceive how the feelings of General Beresford must at this moment have been on the rack.—Disappointed in his last efforts to induce the enemy to a general engagement in the great square;—his gallant little army falling fast by shots from invisible persons;—the

## APPENDIX.

only alternative which could present itself to prevent the useless effusion of so much valuable blood, was a flag of truce, which was hoisted at the castle about one o'clock.

In an instant there were near 10,000 men in the great square, pressing forwards in the most outrageous manner to get into the fort, and even firing at our men on the ramparts; insomuch that it was with extreme difficulty the British troops were prevented from revenging this insult. Indeed the General was obliged to tell the Spanish officers, that if their men did not retire in the course of one minute, he must, as the only measure of safety, haul down the flag of truce, and recommence hostilities. This firmness had the desired effect; and he then sent his conditions to the Spanish General, and they were instantly acceded to.

I inclose a copy of the capitulation; and I trust the high and independent language in which it is couched, and the terms dictated by General Beresford to an officer at the head of myriads of people, will do him infinite honour in England, and obtain for him His Majesty's most gracious approbation of his conduct.

I have received, and annex, a return of the killed, wounded, and missing: by which it appears that there are two officers, two serjeants, one drummer, forty-three rank and file, killed; eight officers, seven serjeants, ninety-two rank and file, wounded, and nine missing: making a total of one hundred and sixty-five: and scarcely any of these misfortunes were occasioned except from the inhabitants on the tops of the houses and churches.

The enemy confess to have lost about seven hundred, killed and wounded, in the short conflict in the streets; and, if it had not been for the inhabitants, I have little doubt that the Spanish troops would have been completely defeated, although seven times the number of the British force.

Nothing is more difficult than to give their Lordships an

## APPENDIX.

idea of the number of men in arms; but, from the best accounts we can obtain, it is thought Pueridon, and the other principal people engaged in the plot, had collected from eight to ten thousand men in the country; that Liniers may have brought over from eight hundred to a thousand; and that the town furnished about ten thousand, armed in various ways, under the secret arrangement of the magistrates.

When every vessel that could escape from Buenos Ayres had joined, I proceeded towards Ensenada, to retire the detachment of marines. Lieutenant Groves, of the *Diadem*, was obliged to quit the *Belem* schooner, as she could not work out. One gun-boat, and a settee a prize, were also left in the harbour, with the *Justina*, a small English merchant ship, that had followed the expedition from St. Helena. Captain Thompson, of the *Neptune*, who was in the castle, was made a prisoner, and Lieutenant Burgh, of the *Raisnable*, with Mr. Ramsay a midshipman, and seven men, who were in the settee, as his boats could not hold them. Lieutenant Herrick, in the *Dolores*, the other armed schooner, worked out in a manner which, coupled with his conduct on the whole of this business, does him great credit.

On the 13th, in the morning, the detachment of marines, under the command of Lieutenant Swaile, was embarked from Ensenada; and his two Spanish field-pieces spiked, and thrown into the river.

On the 14th, I sailed for this anchorage, where I arrived the following day, and immediately addressed the governor of Monte Video on the subject of our troops.

On the 15th, in consequence of receiving, by Colonel Liniers's aid-de-camp, a letter from General Beresford, I dispatched two of the transports to Buenos Ayres, where one arrived on the 17th; but, from the prevarication of the governor of Monte Video in the first instance, and his

## APPENDIX.

subsequent dishonourable conduct, no troops have yet been embarked.

“ My correspondence with the governor, which is not yet closed, will be of too great a length to annex to this report, and I shall therefore make it the subject of another dispatch.

“ I now hope their Lordships will allow me to observe, however disappointed we may have been in the present result of this expedition, that the conquest of Buenos Ayres was acquired in a manner highly honourable to the talents and military character of General Beresford; and that the well-earned fame of his army was materially increased by its gallant conduct in the defence of the place: while the reflection of the faithless Spaniard must shortly satisfy him that his advantage has been obtained by a loss of honour, by an infraction of every national pledge, and by a violation of every moral tie, which the sophistry or example of the bishop never can justify.

“ No opportunity has been lost, during the short time we have been in possession of this place, to procure such information of all its productions and resources as may be of infinite use hereafter: and I am satisfied that the check this expedition has given to the enemy's trade must be severely felt by the mother country; while the consequence likely to result from the duplicity and treachery of their own officers, will, if my information is correct, be still more serious in their application to her future interest in these colonies. These officers armed the inhabitants indiscriminately, to overpower the British troops; and now the mob has refused the viceroy admittance to the town: and although he has collected a considerable number of partizans, they are determined to oppose the reestablishment of the Spanish government.”

While I had the honour of being on board the *Leda*, I had every reason to be satisfied with the zealous attention

## APPENDIX.

of Captain Honyman, his officers, and ship's company: and I cannot but express my warm approbation of the conduct of all the officers and seamen who were constantly employed in the small vessels and boats, under almost every privation, in the very severe and trying weather which we experienced the last ten days.

I most sincerely regret, however, that my situation has imposed upon me the painful duty of making this report to their Lordships, especially as it is done principally by materials collected from different people, which they probably in many instances deduced from vague and uncertain conclusions. If, however, it should hereafter appear that I have failed, in any instance, to do ample justice to the conduct, energy, and prowess, of General Beresford, and the officers and soldiers under his command, it has been owing to the limited scale of my communications since the 12th, from the extreme jealousy of the enemy, and not from any indisposition to appreciate their merits in the most liberal manner;—a sentiment which I have held on every occasion, and publicly marked in all my former dispatches.

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### Note D.

*To his Excellency the Governor-general of Monte Video.*

Diadem, Rio de la Plata, off Monte Video,  
19th September, 1806.

SIR,

I LOSE no time in acknowledging the receipt of your Excellency's letter, N<sup>o</sup> 22, refusing to favour me with a translation in French of your dispatch, N<sup>o</sup> 21, as you conceive me "*fully impressed with the substance and spirit of your arguments.*"

Although it is impossible to be ignorant of the principles

## APPENDIX.

which have uniformly guided your conduct, or to misunderstand the strong expressions of your Excellency's letter, particularly where they apply to the answer of Colonel Liniers to General Beresford; yet I do assure you I felt mortified that I could not comprehend the preamble of your Excellency's dispatch, from not critically understanding the Spanish language.

The animadversions which your Excellency has been pleased to make on the figurative style of my expressions, astonishes me not a little; especially, as it conveys a presumption of literary ingenuity to which, from the early habits of my professional life, I can have no claim. But as I am exceedingly anxious that my future correspondence should not subject me to the slightest stricture from a person of your Excellency's high consideration, I shall endeavour as much as possible to confine it to matter of fact, and never to reason but with the utmost plainness.

Your Excellency has done me the favour to inclose the copy of a letter from Colonel Liniers to General Beresford: but as that letter is written by an officer who in the first instance broke his parole of honour, and now presumes to deny the validity of a treaty which he has publicly signed, I trust I shall not be accused of arrogance if I refuse entering on any correspondence with such a character; especially when I know that on the 22d August he received a very proper and spirited letter from General Beresford, a copy of which I sent you, protesting against the ambiguity of his conduct, and his delay in fulfilling the treaty of the 12th August; after which, I believe on the 28th, he faithfully promised that the British troops should be embarked, and even assigned a situation to which the transports for their conveyance were to be moved.

As your Excellency, however, has taken up all the prominent features of Colonel Liniers's letter, and adopted, in the most unqualified manner, his reasoning to justify the in-



## APPENDIX.

fraction of the capitulation of the 12th August, I must consider your Excellency not only accessory to the fallacy of his arguments, but a principal in point of fact, and responsible for all the consequences that may result from the inhuman treatment of the British troops at Buenos Ayres, as described by General Beresford's letter to Colonel Liniers on that subject, and their detention contrary to the established law of nations.

Your Excellency asserts, that the capitulation was not formally signed for several days after the Spanish troops were in possession of the castle: yet your Excellency must know, that the precise terms were agreed to in presence of Don Casamajor, one of the officers of his Catholic Majesty's treasury, antecedent to the surrender, and signed immediately—otherwise General Beresford would not have surrendered the castle. This is an incontrovertible *fact*, happily supported by the evidence of the officer already alluded to.

It is also considered by your Excellency, from the assertions of Colonel Liniers, that the capitulation was a private document, and never intended to be used for any public purpose.

Is it possible that your Excellency can countenance a doctrine so disgraceful to an officer, and betraying such complete ignorance of the law of nations! Are you not aware, that every subterfuge in a treaty is contrary to good faith? And if the superior force have not clearly and fairly explained himself in his treaty, he alone ought to suffer, as he cannot be allowed to introduce subsequent restrictions which that treaty does not express. This is a maxim of the Roman law, and frequently quoted by the most eminent writers on the laws of nations:—" *Pactionem obscuram iis nocere, in quorum fuit potestate legem apertius conscribere.*"—The idea also of calculating on any advantage by a mental reservation in forming a treaty, has been long and universally

## APPENDIX.

condemned: it is, as Grotius asserts, a real piece of knavery.

The first objection that your Excellency took to the validity of the capitulation, was the incompetency of Colonel Liniers to make one, without a special power from you to that effect: the absurdity of this proposition is, however, very manifest, from the necessity your Excellency has found of recurring to other arguments equally sophistical.

The next subterfuge, was the fabrication of a story—by directing the patron of a passage-boat from Colonia to say, that some musquets were fired at him by one of the small vessels of my squadron. Without being at all jealous of the legal effect which such a circumstance might have had in its application on the treaty, or, I may now say, of the expedient itself, I directed a public enquiry to be made on this subject, by three of the senior captains of my squadron; and I transmit, for your Excellency's information, a copy of their report, without offering any comment on the transaction.

The third pretext, was the representation of Colonel Liniers, that the treaty could be of no avail, because he meant nothing by it. But surely, if your Excellency had not a living instance of the fact, you never could believe it possible that an officer so base, and so lost to every sense of shame, could exist;—who would first break his parole of honour, and then fraudulently obtain possession of the castle of Buenos Ayres, by entering into a treaty, with which he now publicly declares he never meant to comply!

In looking to your Excellency's observations on the second objection, I am sorry to notice how little credit you attach to the report of the lieutenants of this squadron, who were in the transports at Buenos Ayres; especially, as your Excellency cannot trace a single instance in which their character has been implicated in any degree: on the

## APPENDIX.

contrary, I possess the paroles of honour, regularly signed, of several officers of the Spanish navy, who served at the reconquest of Buenos Ayres.

As this is a circumstance materially affecting the character of that profession, in which we know there exist many men of the highest honour, I shall immediately transmit the names of those officers to the Lords Commissioners of the British Admiralty, that their Lordships may be enabled, in case they think it necessary, to publish these characters through the British fleet: and if, after this representation, your Excellency is desirous of seeing their signatures, I will entrust them to any officer of competent rank, that your Excellency may choose to send on board the Diadem for that purpose.

The 3d article of the treaty signed at the Cabildo, on the 2d July, by Don Joseph Ignacio de la Quintana, commander in chief of the Spanish troops, viz. "All persons, of every description, belonging to this city and its dependencies, shall receive every protection from the British government; and they shall not be obliged to bear arms against his most Catholic Majesty: nor shall any person whatever in the city or its dependencies take up arms, or otherwise act inimically, against his Majesty's troops or government," will give your Excellency an additional proof of the *frail* disposition of the inhabitants of Buenos Ayres, who were all in arms at the recapture of the place; and were, I dare say, contrary to their solemn pledge, acting inimically to the British government from the first moment the treaty was signed.

Your Excellency must be aware, that the British army conquered Buenos Ayres in a high military style;—that General Beresford governed the city with honour and liberality;—that every individual was protected in his per-

## APPENDIX.

men and property ;—and that the perfect state of discipline of this gallant army, was the admiration of the whole town.

The reconquest was obtained by perfidy and treachery : and after a cessation had been demanded by the British general, to a war of ambush on the part of the Spanish troops, a treaty was made, in which it was stipulated, that the Spanish officers and troops, taken at Buenos Ayres (and who had, with scarcely any exception, broken their parole of honour), should be exchanged for the British troops, all for all, and that the British subjects and British property should be respected.

Excuses were daily made for the non-performance of this treaty ; the British merchants were closely confined, and their property plundered.

On the 30th of August, as an additional act of aggravation, Colonel Liniers printed a letter replete with the most atrocious falshoods ;—it is the letter of an assassin, trying to destroy the reputation of a gallant officer while he is a prisoner, whom he never dared to face at the head of his army in an open plain. Excuse me, sir, if I doubt whether this letter has ever been delivered to General Beresford : I know his proud spirit, and I dread its predominancy over that reason which should make him despise the character he has to deal with, and treat his efforts to ruin his military reputation with the utmost contempt.

I entreat your Excellency to revise all the correspondence, and to examine dispassionately the various circumstances attending this case. And now allow me to observe, that the letter which I alluded to in the preceding paragraph was not printed till eighteen days after the capitulation, and then exported in packages from Buenos Ayres by every vessel that sailed.

After the shameful attack on General Beresford, which

## APPENDIX.

this letter is meant to convey, the Colonel proceeds to assure the public, that, although he signed the capitulation, it was never meant to be acted upon; and he calls on sixty thousand persons to witness that there was no occasion for him to accede to any terms proposed by General Beresford, except from extreme compassion for his situation. I ask your Excellency, if it would be considered derogatory to the highest military character to propose a capitulation to sixty times his number?—this is surely so simple a question, that it requires very little consideration to answer it.

The next proof which your Excellency offers of the obligation on the part of the British to surrender at discretion, was the number of dead bodies which covered the great square and all the principal streets.

I take the liberty of inclosing to your Excellency the return of killed and wounded of the British army, on the 10th, 11th, and 12th of August. You will see, that only forty-eight were killed; seventeen of whom were surprised at the Park guard, on the 10th, and surrounded by immense numbers of armed people, who inhumanly butchered them; four more were found on the beach, on the morning of the 11th, betraying numerous marks of savage barbarity, and, to the disgrace of every Christian feeling, left naked: now, if the remaining twenty-seven had been spread to the greatest advantage for your Excellency's argument, they would have covered but a small space on your extensive square; and I am certain that they can offer but very inadequate proofs to the expectation of your Excellency, of the military skill, prowess, and effect, of Colonel Liniers, and his sixty thousand men.

Your Excellency has compelled me to enter into an exposition of all these facts, by the manner in which you have introduced the substance of Colonel Liniers's letter: and, as this is the last time I shall send in a flag of truce on this sub-

## APPENDIX.

ject, I take the liberty once more of stating my thorough conviction, that the British nation will hold you responsible for the fulfilment of the treaty in question.

You have to answer for all the murders that have been committed on the helpless British prisoners—you will be held accountable for any sickness that may arise from their being plundered of all their clothes, and confined in places where they are not sheltered from the inclemency of the weather, where they are so narrowly pent up as to endanger their healths from the closeness of the place.

That the example of plunder has been set by the Spanish troops is so notorious, as to be quoted by all the neutral vessels sailing from Buenos Ayres; and I assert, without a fear of contradiction, that no other instance exists of a successful army vauntingly parading the streets with the regimental clothing of their naked prisoners.

I dare say your Excellency rests satisfied, from the known liberality of the British nation, that no retaliation will take place. Retaliation, for acts of wanton barbarity and inhumanity, is certainly very repugnant to the feelings of every British individual; but it is sometimes considered necessary to be applied by a nation, under the confidence of its ultimately becoming an act of humanity, from saving many by the sacrifice of a few.

The persons, however, who by their conduct compel the adoption of such a measure, must be answerable to their God and their country: and I hope Great Britain will never be satisfied until she can obtain the highest state atonement for every soldier who is not honourably returned to his country, in virtue of the treaty which has been so long the subject of our discussion.

Your Excellency must recollect, that this is the most healthy country in the universe;—that scarcely any sickness pervaded our hospitals;—that the mortality cannot, by fair calculation, under the blessing of Providence, exceed five men

## APPENDIX.

annually in one hundred, and all beyond that will be considered to be lost to their country by a too rigid confinement, by want of provisions and clothing, or some other improper cause, unless the most irrefragable proofs to the contrary can be given.

I have now done my duty to my country, by employing every honourable and rational argument which my humble talents suggested to procure the fulfilment of the treaty of the 12th August, and to save from murder or oppression as many of his Majesty's subjects as I possibly can; how far I may succeed in this my last effort, depends on the temper of your Excellency.

At the moment of taking my leave of your Excellency on this subject, my mind is forcibly struck with the horrid scenes which may result from your perseverance in an example so unprecedented, so immoral, and so irreligious. I feel it an indispensable obligation to that Divine Being who created all mankind, to warn your Excellency of the extreme responsibility which attaches to you, not only in this world, but when you are called upon by the Almighty to answer for the unprovoked murders to which you may be accessory, and for establishing a precedent for a mode of warfare scarcely countenanced by the most savage nation. If, however, as I have previously requested, you will review the whole of our correspondence, and all the concomitant circumstances, I rely with much confidence that your future public conduct will be more particularly guided by your own amiable private virtues, than by the influence of those people who may consider themselves beyond the reach of national responsibility.

I have the honour to be,

Sir,

Your Excellency's

most obedient humble servant,

(Signed) HOME POPHAM.

## APPENDIX.

### Note E.

*Captain Sir Home Popham, commanding H. M. Ship Diadem.*

By the Commissioners for executing the office of Lord  
High Admiral of the United Kingdom of Great  
Britain and Ireland, &c. &c. &c.

WHEREAS we think fit that you should hoist a broad  
pendant on board his Majesty's ship Diadem, so soon as  
you shall have left the Island of Madeira; you are hereby  
authorised and directed to hoist a broad pendant ac-  
cordingly, and to wear the same (in the absence of a flag-  
officer) until you shall receive further orders. Given  
under our hands, the 31st July, 1805—

BARHAM.

J. GAMBIER.

PHILIP PATTON.

By command of their Lordships,  
JOHN BARROW.

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### Note F.

*To Captain Sir Home Popham, commanding a Squadron of  
His Majesty's Ships employed on a particular Service.*

By the Commissioners for executing the office of Lord  
High Admiral of the United Kingdom of Great  
Britain and Ireland.

FOR the better maintaining a proper government and  
strict discipline in the squadron under your command,  
we do hereby authorise and empower you to call and assem-  
ble courts-martial as often as you shall see occasion.  
And whereas commanders in chief of squadrons of his



## APPENDIX.

Majesty's ships employed in foreign parts, have sometimes neglected to hold courts-martial for enquiring into the occasion of the loss of his Majesty's ships and vessels, when such misfortunes have happened, whereby the Crown has been put to an unnecessary expence, and the officers and companies to great inconvenience by being kept out of their wages; you are, in case of such accident, to cause a court-martial to be assembled as soon afterwards as possible, to try the respective officers and companies for the same, and to transmit to our secretary the proceedings and judgment thereupon by the first conveyance.

But you are most strictly charged and enjoined not to permit or suffer any lieutenant, acting as commander of any ship or vessel, to assist at, or compose a part of, such courts-martial. The twelve judges of England having, upon a question referred to them by his Majesty's order in council, of the 2d of September, 1791, given it as their opinion, that persons under those circumstances are not commanders within the meaning of the act of the 22d year of the reign of his late Majesty King George the Second. Given under our hands, the 31st July, 1805—

BARHAM.

J. GAMBIER.

PHILIP PATTON.

By command of their Lordships,  
JOHN BARROW.

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### Note G.

(SECRET DEPARTMENT).

*Our Governor and Council of St. Helena.*

WE, the Secret Committee of the East-India Company, hereby direct you to afford any aid in your power, con-

APPENDIX.

sistently with the due protection and security of your own island, to his Majesty's land and naval forces under the command of Major-general Sir David Baird and Sir Home Popham, in any operation in which you may be required by them to assist.

We are your loving friends—

C. GRANT.

(Signed) GEORGE SMITH.

JOHN ROBERTS.

London,  
East-India-house,  
July 26th, 1805.

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Note H.

*The Senior Officer of His Majesty's Ships, Rio de la Plata.*  
(By the Ardent.)

Admiralty-office, 23d September, 1806.

SIR,

I AM commanded, by my Lords Commissioners of the Admiralty, to inclose, for your information, a copy of his Majesty's order in council of the 17th instant, regulating the trade with Buenos Ayres and its dependencies.

I am,

Sir,

Your most obedient humble servant,

(Signed) W. MARSDEN.

(INCLOSURE.)

At the Court at the Queen's Palace, the 17th Sept. 1806 :

Present,

The King's Most Excellent Majesty in Council.

WHEREAS the capital city, town, and fortress, of Buenos Ayres, and its dependencies, have been conquered

C

## APPENDIX.

by his Majesty's forces, and the territory forts of the same are delivered up to his Majesty, and the same are now in his Majesty's possession; his Majesty is thereupon pleased to order and declare, and it is hereby ordered and declared, that all his loving subjects may lawfully trade to and from the said capital city, town, and fortress, of Buenos Ayres, and its dependencies, including therein all and every the territories belonging to or forming a part of the government of the same, in British ships, owned by his Majesty's subjects, and navigated according to law, or in ships *bona fide* belonging to any of the subjects, or native inhabitants, of the said city, town, or territories, such native inhabitants being peaceably resident within the same, and under the obedience of his Majesty's government there; and that such trade shall be subject to the same duties, rules, regulations, conditions, restrictions, penalties, and forfeitures, to which the trade to and from his Majesty's colonies, plantations, and islands, in the West Indies and South America, is or shall be subject by law, except as hereinafter specified.

And his Majesty is further pleased to order and declare, and it is hereby ordered and declared, that all commodities being the growth, produce, or manufacture, of the said city, town, and fortress, of Buenos Ayres, and its dependencies, including therein all and every the territories belonging to or forming a part of the government of the same, or which have been usually exported therefrom, shall be permitted to be imported into any of the ports of the United Kingdom, in British ships, owned by his Majesty's subjects, and navigated according to law, or in ships *bona fide* belonging to any of the inhabitants of the said city, town, or territories, such native inhabitants being peaceably resident within the same, and under the obedience of his Majesty's government there; and that such commodities shall be subject to the same duties, orders, regulations,

## APPENDIX.

restrictions, conditions, penalties, and forfeitures, as articles of the like sort are subject to, coming from his Majesty's colonies, plantations, or islands, in the West Indies or South America.

And whereas information has been received, that the commander of his Majesty's forces, to whom the said city, town, and fortress, have surrendered, has reduced the duties on importation into the same from about thirty-four and a half per cent, *ad valorem*, to ten per cent, *ad valorem*, and two and a half per cent for the consulate or municipal duties, making in the whole twelve and one-half per cent, on all articles imported into the said place and its dependencies, in British ships, owned by his Majesty's subjects, and navigated according to law, or in ships *bona fide* belonging to any of the subjects or native inhabitants of the said city, town, or territories, such native inhabitants being peaceably resident within the same, and under the obedience of his Majesty's government there:—

His Majesty is thereupon pleased to order and declare, that the said reduced duties shall be continued to be levied, and no other, on all articles so imported, with the exception of German linens, which are to continue to be subject to the same duties as were paid thereon before the conquest of the said place by his Majesty's arms, until his Majesty's pleasure shall be further signified. And it is hereby further ordered, that it shall not be lawful for any slave or slaves to be landed, imported, or brought into the said city, town, and fortress, of Buenos Ayres, and its dependencies, including therein all and every the territories belonging to or forming a part of the government of the same, as aforesaid; upon pain that all slaves so landed, imported, or brought, together with the vessels bringing the same, or from which the same shall be landed, and their cargoes, shall become forfeited to his Majesty, his heirs and successors.—Provided always, that this prohibi-

## APPENDIX.

tion shall not extend to the several cases of slaves *bona fide* employed in navigating any ships trading to or from the said place; or of slaves *bona fide* employed as domestic slaves, and coming into the said place with their masters; or of slaves in any manner employed in his Majesty's naval or military service. And the Right Honourable the Lords Commissioners of his Majesty's Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein, as to them may respectively appertain.

(Signed) W. FAWKENER.

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### Note I.

*Note from Lord Lauderdale to M. Talleyrand, dated Paris,  
September 19, 1806.*

THE undersigned Plenipotentiary of his Majesty the King of Great Britain, in answering the official note of his Excellency the Minister for Foreign Affairs, dated the 18th instant, which has been received to-day, begins by remarking, that he purposely abstains as much as possible from all observation upon those points contained in it, which are foreign to the immediate object in question. By this means, he will avoid discussions of a nature to lead him to forget that tone of moderation which it is his duty to observe in the whole course of his mission. He will thus maintain the line of conduct which is conformable to that love of peace, which characterises all the proceedings of the King his master.

“ When the undersigned reflects, that he came to Paris, authorised to conclude peace upon terms understood to have been proposed by France; that notwithstanding the refusal of his Imperial Majesty of all the Russias to ratify the treaty signed by M. d'Oubril, and the splendid suc-

## APPENDIX.

“cesses obtained by his Majesty’s arms in Spanish America, “he was authorised to give assurances (as he had the honour of doing to his Excellency the Minister for Foreign Affairs) that the demands of his Court, in its own favour, “would not in consequence of these successes be materially “increased; the undersigned had reason to be surprised “at finding his Government charged with manifesting an “imperious and exaggerating disposition.” He is not less astonished, that his Excellency, in replying to a note in which Lord Lauderdale had the honour of explaining distinctly to him that the conditions pointed out by his Excellency Baron de Budberg were in substance what would be insisted upon by Great Britain in favour of Russia, should have thought it necessary to reprobate so strongly conditions proposed by M. de Novosiltzoff under totally different circumstances, and of the nature of which the undersigned is entirely ignorant.

Nevertheless, after the explanations given by the undersigned to his Excellency the Minister for Foreign Affairs, and the declaration made by him to his Excellency, that the undersigned is not authorised to negotiate otherwise than so as to ensure the conclusion of a peace with Great Britain and with Russia at the same moment; and, after having received, in the official note of yesterday’s date, assurances that the French Government does not refuse the admission of an article, the design of which shall be to provide for this indispensable object, the undersigned will make no difficulty in resuming the conferences with their Excellencies the French Plenipotentiaries, as soon as their Excellencies shall be duly authorised for this purpose.

The undersigned has the honour, &c.

(Signed) LAUDERDALE.

## APPENDIX.

### Note K.

*To W. Marsden, Esq. &c. &c. &c. Admiralty.*

Diadem, Rio de la Plata,  
28th September, 1806.

SIR,

I BEG to inform you that the Howe store-ship joined me this day, though without any of her convoy.

By her and the Medusa I have had the honour to receive your letters of the 27th March, 12th April, with two of the 15th April, acknowledging the receipt of my letters of 10th October and 13th January, inclosing two from Captain Donnelly, of the 14th and 25th January, and four of the 28th January.

In the list of the letters which you have acknowledged to receive, I do not see the one I had the honour to address you on the capture of the Cape of Good Hope. It detailed the arrangements which led to the favourable issue of that expedition: and if I could have officially learnt that their Lordships had been pleased to signify their approbation of the zealous exertions of the officers and seamen who acted under my orders, it would have been that pleasing testimony which would have enabled me to convey to the squadron the most gratifying remuneration it could receive.

That a letter of such a nature should have miscarried at this moment, when we are immediately opposed to the enemy, is particularly unfortunate; as the detachments of troops which have just arrived from the Cape speak in terms of sincere gratitude of their commander in chief, for having, by his report of their conduct, obtained, through his Royal Highness the Duke of York, his Majesty's most gracious approbation of their services.

## APPENDIX.

I look forward with much anxiety to their Lordships' opinion of the capture of Buenos Ayres; trusting that the effect of it will enable me to remove from the minds of the officers and men I have the honour to command any impression which may now exist, that I have not done ample justice to their zeal, spirit, and activity, on the various occasions which I have had to report on those subjects to their Lordships.

I have the honour to be,

Sir,

Your most obedient humble servant,

(Signed) HOME POPHAM,

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### Note L.

[After Sir Home Popham's letter to Admiral Stirling, of the 3d of September—for which, see the Defence, page 152—the following correspondence took place. There are in the letters of Admiral Stirling some very marked features of the disposition which Ministers felt towards Sir Home Popham: the Editor, therefore, thinks it proper to give the material parts of this correspondence.]

*To Commodore Sir Home Popham, K. M. &c. &c.*

Sampson, Maldonado-roads,  
6th December, 1806.

SIR,

I AM to acknowledge the receipt of your letter of this date; and as the Lords Commissioners of the Admiralty have been pleased to direct your return to England in such ship as I shall appoint, I beg leave to acquaint you that I intend



## APPENDIX.

ship as you should point out. I submit, with all deference, my opinion, that the order implies I should go to England direct from this place: and certainly, according to the explanations of the first writers on the English language, the word 'forthwith,' used on this occasion, means *quickly*: and as I understand that the Sampson has a convoy in charge for the Cape of Good Hope, and is then to proceed to Saint Helena for another convoy to take charge of for Europe, I hope I shall not be considered as trespassing too much, when I offer a few observations for your consideration.

It is natural, sir, for me to feel mortified at the idea of having, by any act of mine, given their Lordships cause to supersede me in this country; but when, in addition to this, I learn that it is proposed that I should be subject to all the aggravation of a voyage lengthened by proceeding from South America to South Africa, thence to Saint Helena for convoy, in my way to England, I cannot but say it is the severest punishment that could be inflicted on me. To a mind sensible, as I trust mine is, to every reproach—to any man of proper feeling—it is that sort of punishment which I consider secondary to scarcely any but death: it is carrying me in a situation humbled in the extreme to the place which, in conjunction with Sir David Baird, I had the honour to capture. There are also reasons, too evident to need any explanation, which would make a visit to Saint Helena, situated as I am, equally galling to my feelings.

To these objections—which, I trust, so far from appearing to be taken up on loose grounds, or supported by arguments arising merely from chagrin or disappointment—I add, and I hope it is not unnatural to do so, the very great hardships of such a protracted voyage; the serious inconvenience which my private affairs would suffer under almost any circumstance, but more particularly under my change

## APPENDIX.

as I believe *I have a right to do*\*; and such as, in my humble opinion, ought to induce obedience: but if you think otherwise, the question must be decided by our superiors.

I understand from Captain King that you intend to embark on board of the prize brig, and that your determination is, not to go hence in the Sampson. If this is the case, I hope the brig will sail either before or at the time the convoy does: as otherwise, in consequence of the memorandum issued this day, she may lose the benefit of being navigated by seamen belonging to the King's ships.

The conversation with Captain King induces me to flatter myself, that this letter will close our correspondence upon a subject which has given me much uneasiness; because the public service is at this moment of such consequence, that it ought alone to occupy my attention; and I have not time to attend so much as necessary to general expressions, either in speaking or in writing.

I act according to the best of my judgment: I have no immediate object just now but the public good: and if

\* Charity might dispose one to think that Admiral Stirling was an unwilling agent of the Admiralty in this transaction; because one is naturally disinclined to attribute harshness to a man so fond of professing justice, humanity, and feeling. But how is the Admiral's disacquaintance with the law of his own profession to be accounted for? He must have been ignorant of the law; for I cannot suppose that he would intentionally overstep it, to oppress Sir Home Popham. That he had no such right, as by this letter he believes himself authorised to assume, must be obvious to any man acquainted with naval law. Sir Home Popham had been on half-pay three days before this letter was written; and of course not subject to naval discipline, or martial law. An attempt was made in the bill of 1749 to alter the law upon this point; but the minister, Mr. Pelham, was obliged to abandon the proposed alteration. For the arguments on this subject, and a full description of the law, see the debates on the act of 1749, in the appendix to Mr. M'Arthur's *Treatise on Courts-martial*.—EDITOR.

## APPENDIX.

I have done wrong, may God forgive me! and may any decision, in consequence thereof, at home, deter others from acting in a similar manner!

I think you might have known my determination respecting you soon after my arrival, and therefore it appears to me evident I should persist: and as I see no reason to justify a change of opinion, however my private feelings may be hurt, from reflecting on any evils which may happen to yourself in consequence of steps that you have taken, or mean to take, or on the distress which may thence be occasioned to an amiable wife and large family, which you pathetically describe as being totally dependent on you\*.

I will not take up your time further than repeating my offer, to send with my dipatches any letters which you may think proper to write to the Lords Commissioners of the Admiralty, if you are desirous that my representation should not reach their Lordships before yours. But if you do not choose to adopt this mode, I promise that, on your notifying assent to the proposal, I will, on the packet which contains my correspondence respecting your return, request, if not contrary to official form, that it may not be opened until your arrival in England, or letters are received from you.

Farewell! I most heartily wish you a good passage; and that you may long enjoy domestic felicity.

I have the honour to be,

Sir,

Your most obedient and very humble servant;

(Signed) CHARLES STIRLING.

\* "How smooth the language!

"How severe the act!"

Possibly Admiral Stirling reluctantly obeyed his orders in this respect.—EDITOR.

## APPENDIX.

*Charles Stirling, Esq. Rear-Admiral of the White,  
Commander in Chief.*

Maldonado, 10th December, 1806.

SIR,

It was my intention that the last communication I had the honour to make to you should have closed our correspondence; but as the letter which I received in answer states a proposition at variance with my instructions to Captain King, and suggests a measure to which you require my assent before you carry it into execution, I am not only bound, but invited to take up my pen once more on the subjects under discussion.

I did not desire Captain King to ask, if you would allow me to stay here to settle *business*;—an expression furnishing a glorious thesis for an ingenious or vindictive mind. I requested him to ask, if you would allow me to remain here to see the public accounts closed, which were now open by my order; and he conveyed to me your positive negative to such a demand.

With respect to the second question, “Will you force Sir Home Popham to sail in the *Sampson*?” which ship is bound to the Cape of Good Hope; you say, “You shudder at the idea of using force,” &c.

To the feelings of a gentleman, the essence of force has been used by the strong expression of *insist*: but as the question at issue rests on a difference of opinion upon law, usage, and construction (on which points the learned judges in England have occasionally divided), I deemed it expedient that every act should be formal, that the case may be the less complex; and to avoid the imputation of having spontaneously ceded to your arguments, I did desire Captain King to propose the question.

I cannot, sir, quietly surrender my liberty, protected as it is by the 29th chapter of *Magna Charta*, and other

## APPENDIX.

proud acts in the British Constitution; nor can I agree to be made a precedent that might arm a minister with the power of exercising political revenge against any officer, however high his rank and situation. My compliance in this case might sanction the propriety of sending an officer from America to Africa, in his way to England; and it would equally justify the sending another from Asia to America, in his way to Europe. Were I to be forced to go to the Cape of Good Hope, I should consider it a deviation from the spirit of their Lordships' instructions to me, and the infliction of a most unnecessary punishment.

Captain King was perfectly right in saying, I had determined to take my passage to England in the prize brig, as no direct conveyance has been pointed out: and I very early experienced that the door of accommodation was shut to me.

Whenever it is evident to my judgment that the brig can make any progress on her voyage, I shall proceed to sea; but if I should have the misfortune to differ also on this point, from a longer experience of the probable winds in the offing, and the set of the currents, I must submit with patience to the exercise of your power, in a measure which you have proposed to adopt, whatever usages it may overturn, or whatever interests it may affect.

I have no doubt that we both act to the best of our judgment. As, however, you say that you have no immediate object but the public good, it would be natural to enquire, what public good would be effected by forcing me to England *via* the Cape of Good Hope, unless it could be proved that I should commit some public wrong on my arrival there by the regular and direct route.

Whatever may be our reflections on the evils which may happen to me, and the distress which may be occasioned to my family in consequence, as you assert, of the steps I

## APPENDIX.

have taken, I can only say, the world must judge of the *causa mali*.

I am aware, sir, that your time is much engaged on the public service; mine, I assure you, was continually occupied, in providing for the exigencies of a starving fleet, the disasters of a winter's blockade, and the inconveniences of an open river, without any roadstead: added to which, I had all the feelings of anxiety, in being seven months on this service, without hearing from England. On the contrary, you have all the authority and protection to be wished for:—you are abundantly furnished with provisions, by the victuallers which you brought from England;—you have the advantage of a harbour, a summer season, and the result of all our seven months' local experience. I hope this is the last time I shall have occasion to trouble you.

I have no wish that you should propose to the Admiralty, not to read your correspondence about me till I reach England; as I am satisfied the Admiralty is too just, too honourable, and too liberal, to decide upon an *ex parte* statement. We differ in point of opinion; and I heartily rejoice that the difference regards merely the treatment of an humble individual, and not the advancement of the national interest, upon which I should cede to superior judgment.

I cannot return my farewell, without offering my thanks for the interest you take in my having a speedy passage, and your sincere wish that I may long enjoy domestic felicity: I hope, and trust, by going direct to England, it will not be long before I enjoy that blessing.

I have the honour to be,

Sir,

Your most obedient humble servant,

(Signed) HOME POPHAM.

APPENDIX.

Note M.

*Mr. Greetham, jun. Portsmouth.*

Admiralty-office, 6th March, 1807.

SIR,

IN compliance with the request of Sir Home Popham, as signified in your letter of yesterday's date, I am commanded by my Lords Commissioners of the Admiralty to send you the inclosed copy of a letter from Sir Francis Vincent, with a copy of the paper therein referred to.

I am,

Sir,

Your very humble servant,

(Signed). B. TUCKER.

*To Benjamin Tucker, Esq.*

Downing-street, March 6th, 1807.

SIR,

I HAVE laid before Lord Howick your letter inclosing an application from Sir Home Popham, through the deputy judge-advocate of the fleet, for copies of certain papers from this office, to be employed in his defence before the court-martial; and his Lordship, having received his Majesty's permission for the purpose, has directed me to transmit to you, for the use of Sir Home Popham, the inclosed copy of a dispatch from Lord Grenville, dated November the 19th, 1799, which appears to be the paper first referred to by Sir Home Popham.

With respect to the other paper applied for, I have Lord

D

## APPENDIX.

Howick's direction to acquaint you, for the information of the Lords Commissioners of the Admiralty, that its contents being of a secret and confidential nature, render it unfit to be granted: but his Lordship directs me at the same time to state, that the only part of it which relates to Sir Home Popham is highly expressive of the confidence reposed in him by his Imperial Majesty the Emperor of Russia.

I am,

Sir,

Your most obedient humble servant,

A true copy.

(Signed)

T. VINCENT.

B. TUCKER.

*To Sir Home Popham.*

Downing-street, 19th November, 1799.

SIR,

HIS MAJESTY has thought proper to direct that you should proceed to Petersburg, in order to assist his minister there in the detail of such arrangements as his Majesty has proposed to his ally to enter into with him, for the vigorous prosecution of the war in the ensuing campaign. The full approbation which I have had the pleasure of conveying to you from his Majesty, respecting your conduct in the discharge of the important business entrusted to you in the course of the present year, and the honourable testimonies which you have received of the satisfaction of the Emperor of Russia, in your zeal, activity, and talents in the execution of that trust, leave me no room to doubt that the same qualities will again be exerted with singular success in the service of his Majesty, and in the promotion of objects so interesting to the glory of two sovereigns, whose intimate union and good understanding have already accomplished so much towards the deliverance of Europe,



## APPENDIX.

and afford so fair a prospect of completing that great and honourable work.

The repeated conversations I have had with you previous to your departure, and the very ample instructions to Sir Charles Whitworth, of which you are the bearer, and which you are to consider as equally addressed to yourself in all points where your professional talents and skill, and the activity and resources of your mind, can enable you to render yourself useful, leave me little to add to the dispatch.

It is, however, proper that I should mention one subject, to which I am more particularly desirous of directing your attention; it relates to the means of facilitating and expediting the arrival of a part of ~~the~~ Russian troops destined to reinforce the army of Prince Suwarrow, by sending them from the southern provinces of Russia, by the way of the Black Sea, to a port in the Adriatic, Venice, or Trieste. I am desirous that you should procure such information as may tend to satisfy your own mind respecting the degree of facility and advantage that might attend the execution of such a plan; and that if it should appear to you likely to expedite the arrival of a part of the troops at the place of their destination, you should bring the subject under the consideration of the Emperor of Russia, whose zeal in the success of this great cause will, I am confident, induce him to listen with readiness to any proposal tending to promote the important interests which are at stake.

I am, &c.

A true copy.

(Signed) GRENVILLE.

(Signed) B. TUCKER,

FINIS.

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BALLANTINE & LAW, Adelphi.









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